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IN

THE SUPREME COURT

AT

OCTOBER TERM, 1993

BEGINNING OF TERM

OCTOBER 4, 1993, THROUGH MARCH 21, 1994

TOGETHER WITH OPINIONS OF INDIVIDUAL JUSTICES IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
HARRY A. BLACKMUN, Associate Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.

RETIRED

WARREN E. BURGER, Chief Justice.
LEWIS F. POWELL, Jr., Associate Justice.
WILLIAM J. BRENNAN, Jr., Associate Justice.
BYRON R. WHITE, Associate Justice.

OFFICERS OF THE COURT

JANET RENO, Attorney General.
DREW S. DAYS III, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
ALFRED WONG, Marshal.
SHELLEY L. DOWLING, Librarian.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective October 1, 1993, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, CLARENCE THOMAS, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, HARRY A. BLACKMUN, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

October 1, 1993.

(For next previous allotment, and modifications, see 502 U. S., p. VI, and 509 U. S., p. V.)

PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF JUSTICE MARSHALL*

MONDAY, NOVEMBER 15, 1993

Present: CHIEF JUSTICE REHNQUIST, JUSTICE BLACKMUN, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, and JUSTICE GINSBURG.

THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to our former colleague and friend, the late Justice Thurgood Marshall.

The Court recognizes the Solicitor General.

Mr. Solicitor General Days addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

At a meeting this afternoon, the members of the Bar of this Court unanimously adopted a Resolution memorializing our regard for the late Justice Thurgood Marshall and expressing our profound sorrow at his death. With the Court's leave, I am honored to present this resolution to the Court.

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*Justice Marshall, who retired from the Court effective October 1, 1991 (502 U. S. VII), died in Bethesda, Maryland, on January 24, 1993 (506 U. S. VII).

RESOLUTION

The members of the Bar of the Supreme Court of the United States met today to record our respect, admiration, and great affection for Thurgood Marshall, who served this Court as Associate Justice from 1967 to the time of his retirement in 1991. A lawyer and jurist of worldwide renown, Justice Marshall's legal career of almost 60 years embodied an unyielding commitment to equal justice under law.

While many great figures participated in the American struggle for civil rights and civil liberties, none was more important than Thurgood Marshall. His dedication to the living Constitution and legal institutions of America kept him focused on the importance of individual rights and liberties, not only for African-Americans, but also for women, the poor, and other underrepresented people. During his lifetime Thurgood Marshall dominated the legal landscape, tenaciously pushing race relations along the path of equality in courtrooms, classrooms, and corporate boardrooms.

A chronicle of the extraordinary life and contributions of this legal legend reveals the many facets of his character. As civil rights advocate, as Associate Justice of this Court, as mentor, as leader, as ambassador of good will, and as friend, he was a man of incredible vision and unquestioned commitment. We owe an enormous debt of gratitude to his devoted wife Cissy and his wonderful sons, Goody and John for sharing him with us and with the Nation. His inherent sense of fairness and his faith in the basic decency of the American people, inspired his advocacy, his writing, and his courage to imagine a better world and to make the imagined world real.

Born on July 2, 1908, in Baltimore, Maryland, to William and Norma Williams Marshall, young Thurgood attended the local elementary and secondary schools for "colored" children. His childhood memories of this segregated city—the unfair treatment and discrimination he experienced first hand—etched indelible impressions in his mind. His father worked as a Pullman car waiter and later as head steward at the Gibson Country Club. His mother taught elementary school and made great sacrifices to send young Thurgood to college at Lincoln University in Chester County, Pennsylvania. She pawned her wedding and engagement rings to help pay his college expenses. Marshall also worked at numerous summer jobs to defray his expenses. Accepted one summer for the position as a helper on the Pullman trains, he inquired about obtaining a larger pair of trousers for his uniform to accommodate his long legs. The white conductor glared at him saying, "Look boy, don't you know that it is easier for me to get a new Negro than a new pair of pants!"

Graduating with honors from Lincoln in 1929, Marshall knew that rejection by the all white University of Maryland Law School was certain. He then made the fortunate decision to enroll at the Howard University School of Law in the District of Columbia. There he began his apprenticeship and with Dean Charles Hamilton Houston, a great constitutional scholar and creative genius who helped to develop the civil rights strategies. Thurgood and his Howard colleagues refined, defined, and implemented these strategies in the classrooms and eventually in the courts, leading to great victories in the 40's, 50's, and the 60's.

Marshall graduated first in his class from Howard in 1933 and began private practice in Baltimore. But most of his time was spent in voluntary support of the local NAACP. One of his first cases was against the University of Maryland Law School to force it to admit black students. He succeeded and was responsible for the first black law student's enrollment in 1935.

In 1936 Houston called Marshall to join him at the New York headquarters of the NAACP national legal staff. He was appointed chief legal officer in 1938, following in the steps of Houston. In 1940, Marshall helped to establish "the NAACP Legal Defense and Educational Fund, Inc." (popularly called the Inc. Fund or LDF) as a litigation and public education entity separate from the NAACP. He served with great distinction as its Director/Counsel until his appointment to the Federal Bench.

As the principal architect and exponent of the Inc. Fund's civil rights strategy, Marshall traveled constantly. He spent long hours, even days devoted to the civil rights struggle analyzing and arguing landmark cases. Even as he prepared for the ultimate civil rights battle in the 1954 school cases, Buster, his first wife, was struggling with her own fight against cancer. She never revealed how sick she was until after the *Brown* decision. Her personal struggle inspired Marshall to continue his fight for equal justice.

Thurgood Marshall waged extraordinary legal battles. For more than 30 years he fought discrimination wherever it arose—in education, in employment, in voting rights, and in the criminal law. As the lead LDF trial attorney, he worked closely with Charles Houston, William Hastie, William Coleman, Jack Greenberg, Lou Pollak, and other brilliant African-American and white lawyers who joined the civil rights vanguard. Together this distinguished team labored to implement a bold master plan for civil rights and litigate the cases that established the legal foundation for *Brown* and its progeny. Of Marshall's thirty-two civil rights cases before the Supreme Court, he won twenty-nine—an extraordinary record.

Clearly, each victory broke new ground. However, none was more important in American jurisprudence and in the lives of millions of people than the watershed decisions in *Brown* v. *Board of Education in Topeka, Kansas,* 347 U. S. 483 (1954); 349 U. S. 294 (1955). In these unanimous decisions, the Supreme Court began the process of dismantling racial segregation in the Nation's public schools.

The Court ruled that all children had the right to attend schools that were not segregated by race. The decision struck down racial discrimination in education and abandoned forever the doctrine of "separate but equal." With the help of Dr. Kenneth Clark, a noted black psychologist, Marshall demonstrated the harm to children who were forced into all black classrooms. Marshall argued persuasively and passionately for an end to this intolerable practice and to the insidious justification based on the inherent inferiority of the black man.

Brown stands for the proposition that law can change the world and that the Supreme Court, as the interpreter of the law, can play a forceful role in fulfilling the highest human values. The importance of the *Brown* decision cannot be overstated. It repudiated the previous justifications for legally sanctioned discrimination in the public classrooms of America. Although elimination and erosion of the vestiges of discrimination moved very slowly, Marshall never gave up hope. He never despaired. He never stopped fighting for the elimination of inequality and injustice wherever it appeared.

As important as *Brown* and its progeny were, they should not eclipse Marshall's accomplishment in fighting segregation at the ballot box. As Marshall himself said: "I don't know whether the voting case or the desegregation case was more important. Without the ballot, you have no citizenship, no status, no power in this country. But, without the chance to get an education, you have no capacity to use the ballot effectively."[1] In winning the "white only" primary litigation, *Smith* v. *Allwright*,[2] Marshall teamed with Bill Hastie, his friend and former Howard Professor, to win for African-Americans a more significant voice at the ballot box. While the impact of this decision was not the immediate enlargement of the voting power of blacks, "it lent legitimacy to the arguments of lawyers [such as Marshall] who continued to complain to the United States Attorney General about discriminatory voting barriers in the South."[3] Ultimately, Marshall's efforts and those of his cooperating attorneys would forever change the face of city halls, state legislatures, governors' mansions, political parties, and political nominating conventions. Eventually America came to accept black candidates for political office at the local, state and Federal levels.

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[1] Carl T. Rowan, "Dreammakers and Dreambreakers: The World of Justice Thurgood Marshall," Little Brown & Company (1993), p. 129.

[2] 321 U. S. 649 (1944).

[3] J. Clay Smith, Jr., "Emancipation: The Making of the Black Lawyer, 1844–1944," University of Pennsylvania Press (1993), p. 18.

Marshall's work outside of the United States reflected the breadth of his concern for equity and fairness for people of color throughout the world. During the fifties and sixties the emerging independent nations of Africa turned to American constitutional scholars for assistance in shaping the legal framework that would govern the new rights and responsibilities of their citizens.

In 1961 Jomo Kenyatta, the great leader of Kenya, asked Thurgood Marshall for help. Marshall traveled to London and Kenya, working tirelessly for weeks with the Constitutional Conference of Kenya. He relied on the model of fundamental rights in the American Declaration of Independence and the Constitution. Marshall put into words a world in which Kenyatta's dream of an independent nation with a black majority population under the rule of law became a reality. Mindful of the hardships and inequities of black Americans struggling to end segregation and to become full participants in the democratic process, Marshall focused on the integrity of the electoral process, the legislative forum, and the role of the courts in interpreting the basic tenets of the law and in protecting the rights of the minority—in the case of Kenya a white minority.

In 1951 Marshall traveled to Japan and Korea to investigate the disproportionately high incidence of courts martials and disciplinary actions against "colored" soldiers. He found blatant disparities in charges and punishment imposed on black soldiers when compared to white soldiers in similar circumstances, especially in the Army. He challenged the unfairness of treatment and the absence of any modicum of due process in the "frontier justice" of the military courts. With his customary candor and persuasive arguments, Marshall was able to document these practices, to bring this situation into public view, and to enlist congressional pressure to curtail these discriminatory practices against black soldiers.

In 1961 President John F. Kennedy nominated Thurgood Marshall for appointment to the United States Court of Appeals for the Second Circuit. He was given a recess appointment in October, 1961 and confirmed by the Senate in 1962. Unfortunately, his confirmation was stalled for a year by a group of segregationist Senators. Despite these tactics, Marshall served with distinction as an appellate jurist for several years. In 1965, President Lyndon Baines Johnson named him Solicitor General of the United States, the first African-American to hold that position. As the Nation's top appellate lawyer, Thurgood Marshall successfully defended before the Supreme Court the constitutionality of numerous statutes, including the 1965 Voting Rights Act which secured equal voting privileges for all Americans.

In 1967 President Johnson called Marshall to the White House and advised him of his intention to nominate Marshall to become an Associate Justice of the Supreme Court. As the first African-American in the history of the United States so honored, Marshall's becoming part of the Court showed how much he had changed the world. Typically, Marshall asked LBJ for a moment to share his news with his devoted wife Cissy before the press was advised. Characteristically, he also said to LBJ in a more serious tone, that he would "call them as he saw them." LBJ responded that he would expect nothing less. Although a bitter Senate confirmation fight erupted again, Marshall was confirmed and sworn in on August 20, 1967.

During his twenty-four year tenure on the Court, Justice Marshall served as the conscience of the Court. With firm and unwavering conviction, he aggressively challenged his colleagues and counsel on issues of racism, bigotry, sexism, sexual preference, and prejudice with his sharp mind, candid speech and powerful pen. His questions at oral argument would unerringly uncover the fundamental issues of fairness that lay at the core of the cases facing the Court. Often in concert with his great friend and ally, William Brennan, Marshall argued against artificial barriers to human dignity and individual rights. On many occasions Marshall dissented vigorously from what he believed to be the Court's disregard for the rights of the elderly,[4] of women,[5] of unpopular political causes,[6] minors,[7] and native Americans.[8]

Justice Marshall's deep concern for protection of the Bill of Rights led him to denounce efforts to stifle free speech,[9] to defend his unwavering belief that the imposition of the death penalty was unconstitutional,[10] and to voice repeatedly his outrage about violations of the due process rights of criminal defendants.[11] In powerful words Justice Marshall's opinions expressed the agony and the pain suffered those facing charges. His concerns about their rights were particularly poignant because of his personal experiences as a young lawyer defending black citizens who had been unjustly accused and punished by the criminal justice system. Historians will certainly chronicle his impact on American jurisprudence.

Even with his extraordinary commitment of time and energy to the critical legal issues of the twentieth century, Thurgood Marshall still found time to enjoy great personal contentment with his beloved wife, Cissy. Cissy brought him love, compassion, and understanding. They enjoyed the proud moments of parenthood with their sons, Thurgood, Jr. ("Goody") and John. Justice Marshall took great pleasure in the fact that both his sons chose careers in the law—Goody as an attorney and counselor to Senator and now Vice President of the United States, Albert Gore, Jr., and John as a Virginia State Trooper and instructor for a statewide special services division. Marshall's grandchildren brought him great joy in his later years. He often regaled clerks with the latest stories of young Will and the determination of little Cissy!

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[4] *Public Employees Retirement System* v. *Betts,* 492 U. S. 158, 182 (1989) (Marshall, J., Dissenting).

[5] *Personnel Adm'r* v. *Feeney,* 442 U. S. 256, 281 (1979) (Marshall, J., Dissenting).

[6] See *Munro* v. *Socialist Workers Party,* 479 U. S. 189, 200 (1986) (Marshall, J., Dissenting).

[7] See *Schall* v. *Martin,* 467 U. S. 253, 281 (1984) (Marshall, J., Dissenting).

[8] *Rosebud Sioux Tribe* v. *Kneip,* 430 U. S. 584, 615 (1977) (Marshall, J., Dissenting).

[9] See *Police Department* v. *Mosley,* 408 U. S. 92 (1972); *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.,* 391 U. S. 308 (1968).

[10] See *Furman* v. *Georgia,* 408 U. S. 238, 314 (1972) (Marshall, J., Concurring).

[11] See *U. S.* v. *Salerno,* 481 U. S. 739 (1987).

Justice Marshall served as a beacon of hope for generations of men and women, young and old, African-American, Asian, Hispanic and white who simply sought equal opportunities to live, to learn, to work, and to share in the rights and liberties enjoyed by the majority of our great Nation. As we pay tribute to this extraordinary man of the law today, we must never forget his extensive contribution to American society. Thurgood Marshall made our country a better place for all citizens—as leader, fighter, and defender of the underrepresented.

A brilliant lawyer, constitutional scholar and jurist, Thurgood Marshall unselfishly dedicated himself to work for the NAACP Legal Defense Fund and for equal justice at the bar of this Court, altering not only the course of race relations in America, but also the broader legal landscape for future generations. His advocacy and his leadership advanced social and political understanding among all Americans. He virtually created the "public interest lawyer"—who fought for individuals and for a cause. Even as Thurgood Marshall and his loyal band of cooperating attorneys chipped away at the theory of "separate but equal," they painstakingly prepared the way for integration, weaving together the fabric of a just society born out of a dynamic melange of people from different ethnic, cultural, and racial backgrounds.

Throughout the early years, Thurgood Marshall showed extraordinary inner strength and character that were the hallmarks of his life's work. Marshall willingly confronted both great physical risks and enormous personal sacrifices. His life was often in danger; death threats were common. In making trips to southern courthouses, there were many close calls. Threats of lynching, assault, and murder were routine.

Marshall's life and achievements continue to inspire young people to follow his example, to sustain the legacy of the civil rights movement, and to become advocates for equal rights under law. We must not forget, however, the powerful commitment that kept Marshall on a steadfast path. With limited resources at the Fund, Thurgood Marshall had to piece his cases together, literally and figuratively. For example, at LDF he had one old typewriter and carbon paper that had been used and reused. His secretary, legal assistants, and even Marshall himself sometimes went without pay for weeks when money was needed for filing papers or paying train fare for an LDF lawyer to appear at a trial. Even under these adverse conditions, Marshall never wavered. His drive and commitment led him to do whatever was necessary to get a case heard, to win the argument. Funds to support his litigation effort were collected in churches, at rallies sponsored by the NAACP, and from several financial angels who believed in the man and his mission. Pennies, nickels and dimes—the collection was always small but large enough to keep him going.

Contrast the Marshall experience with those of the thousands of black elected officials at the local, state and Federal levels today with multi-million dollar budgets, staffs, and support for the multifaceted work that they perform. Thurgood Marshall had no such resources. Today's governmental leaders function in a very different world. But, it is a world that could not exist without the pivotal foundation created by Thurgood Marshall in the voting rights challenges, starting with *Smith* v. *Allwright*. Changes in the political process occurred in the United States not by magic, but by strategic planning, hard work, sacrifices, and risk-taking.

As Paul Gewirtz, a former Marshall clerk, has observed, President Johnson's historic announcement captured the essence of Marshall: "Thurgood Marshall symbolizes the best about our American society, the belief that human rights must be satisfied through the orderly process of law."[12] Robert Carter, a former LDF lawyer and currently a federal judge, commented on his mentor's most enduring characteristic. He focused on

> "[Marshall's] vivid, almost religious faith in the efficacy of the National Constitution in protecting the individual against government discrimination and abuse. He believed that the 13th, 14th and 15th Amendments to the United States Constitution were an updated Magna Carta, insuring equal citizen rights for blacks and that his mission was to see this concept of the Constitution become a firm facet of constitutional jurisprudence. He never faltered in this belief."[13]

This fundamental belief in the Constitution was the standard which Marshall held high as a civil rights lawyer and as a Justice of the Supreme Court of the United States. Justice Marshall brought to the Court a unique understanding of real life. Having spent most of his adult life working and living among "poor colored folks" Marshall "knew what police stations were like, what indignities emanated from rural Southern life, what the streets of New York were like, what the corrupt trial courts were like, what death sentences were like, what being black in America was like and he knew what it felt like to be at risk as a human being."[14] From these experiences Marshall could explain in graphic human terms to his colleagues on the Court the difference the law could make.

In a recent tribute, his colleague, JUSTICE SANDRA DAY O'CONNOR, poignantly captured his unique quality to demonstrate the impact of legal rules on human lives:

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[12] Paul Gewirtz, "Thurgood Marshall," 101 Yale L. J. 13, 14 (1991).

[13] Robert L. Carter, Judge, U. S. District Court for the Southern District of New York, Journal of Supreme Court History 1992, Yearbook of the Supreme Court Historical Society, pp. 16–17.

[14] *Id.*

> "His was the eye of a lawyer who had seen the deepest wounds in the social fabric and used law to help heal them. His was the ear of a counselor who understood the vulnerabilities of the accused and established safeguards for their protection. His was the mouth of a man who knew the anguish of the silenced and gave them a voice."[15]

Whether in the majority or in dissent, Justice Marshall's faith in the Constitution encompassed more than the racial issues of his civil rights days. Indeed, he saw the protection provided by the Constitution as extending beyond color and racial constraints to preventing official governmental abuse of any disadvantaged person. For example, Marshall staunchly believed that equal protection meant equal—regardless of color. In *Peters* v. *Kiff*[16] Justice Marshall delivered the opinion of the Court upholding a white defendant's claim that the Constitution was violated by the exclusion of blacks from the petit and grand juries. "The existence of a constitutional violation does not depend on the circumstances of the person making the claim."[17]

Rejecting the argument of his dissenting brethren that the white defendant was not harmed by the exclusion of blacks on the jury, Marshall wrote convincingly that the exclusion of any large segment of the community from juries "deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented."[18]

Justice Marshall's belief that equal treatment transcended racial equity is evident in many of his opinions and dissents while a member of this Court. Even with the changing judicial philosophy that marked the majority opinions in his later years on the bench, he continued to write most often in dissent about the Court's neglect of the unfortunate in our society.

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[15] Sandra Day O'Connor, "A Tribute to Justice Thurgood Marshall: The Influence of a Raconteur," 44 Stan. L. Rev. 1217 (1992).

[16] 407 U. S. 493 (1972).

[17] 407 U. S. at 498.

[18] 407 U. S. at 503-504.

Some have characterized Justice Marshall as "a storyteller" or "a curmudgeon." Neither description is accurate nor appropriate to capture the essence of the man. Marshall was indeed a raconteur. But he used his personal experiences with the indignities of the legal system as a means to help his colleagues better understand why such behavior and abuse should not be tolerated. His sometimes gruff demeanor reflected his impatience with the slow pace of true integration in America.

Although he had confronted the depths of bigotry, hatred, and selfishness, he never turned bitter but always aimed at "doing the best you can do with what you've got." Justice Marshall held fast to his fundamental belief in equality under the law. His position was never sugar-coated nor served up as a softball. During the bicentennial celebration of the Constitution, Marshall shocked many when he refused to speak in platitudes about the document.

Instead, he reminded us that the Constitution did not condemn slavery; rather the Constitution was defective at the start. Marshall observed that:

> ". . . the credit belonged not to the framers who wrote the Constitution in 1787, but to those in the ensuing 200 years who refused to acquiesce in outdated notions of liberty, justice and equality, and who strived to better them. The true miracle was not the birth of the Constitution, but its life.
>
> "I plan to celebrate the Bicentennial of the Constitution as a living document. . . including the Bill of Rights and the other amendments protecting individual freedoms and human rights."[19]

In August 1992, for example, Marshall could not resist reminding the leadership of the American Bar Association of the historical exclusion of black lawyers from the organization, even as it bestowed upon him its highest honors. His comments on that occasion were quintessential Marshall. "We've come a long way (pause), but we certainly know how far we have to go. I hope you will stick with me in fighting the fight for full civil rights and full civil liberties."[20]

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[19] Thurgood Marshall, "Reflections on the Bicentennial of the United States Constitution," 101 Harv. L. Rev. 1, 2, 5 (1987).

The legacy of Justice Marshall will live on in the men, women, and children whose lives and souls he touched and all of those who benefited from his legal triumphs. He dared to use the law as an instrument of social change, and history will record that he succeeded. He humanized legal theories and dared to challenge the morality of law that crushed the human spirit and denied black citizens the opportunity for a decent life. The Bar of the Supreme Court speaks for all the lawyers, judges, and citizens of this country when we say: Thank you, Mr. Justice Marshall, for opening our hearts and never letting us forget that our society can only succeed when the least among us have the same opportunity as the most privileged.

Wherefore, it is accordingly

RESOLVED, that we, the Bar of the Supreme Court of the United States, express our profound sorrow that Associate Justice Thurgood Marshall is no longer with us; we express our admiration for his deep understanding and commitment to equal justice under law, and our respect for his dedication to the rule of law in a just society; we repeat our sincere appreciation for his use of the law as an instrument of social change in the quest to eliminate the stigmatic injury of racial discrimination; and it is further

RESOLVED, that the Solicitor General be asked to present these Resolutions to the Court and that the Attorney

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[20] Appleson, "ABA Supports the Right to Abortion," Reuters, Ltd., August 11, 1992.

General be asked to move that they be inscribed upon the Court's permanent records.

THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General. I recognize the Attorney General of the United States.

Attorney General Reno addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The Bar of this Court met today to honor the memory of Thurgood Marshall, Associate Justice of the Supreme Court from 1967 to 1991.

From his birth in Baltimore, Thurgood Marshall's life was one of public service. He was raised by loving parents who instilled in him confidence in himself and pride in his heritage, and the habits of mind, force of will, determination of character, and skill in advocacy that would serve him and his country so well in later years.

Justice Marshall received his early education in the segregated public schools of Baltimore, beginning in the elementary school where his mother taught. He went on to attend Lincoln University, and between his sophomore and junior years married his first wife, Vivien, who lent her patience and support to his struggles, defeats and triumphs for 25 years, until her untimely death in 1955. After college he was denied admission to study law at the University of Maryland because of his race—an injustice he would rectify five years later when, only two years out of law school himself, he obtained an order from the Maryland Court of Appeals directing the University to enroll his client as its first black law student.

That victory was made possible by the legal education Marshall received at Howard University, where he prospered under the tutelage of Charles Houston, William Hastie, and other members of the faculty, and graduated as valedictorian in 1933. It also marked the beginning of his association with the NAACP, which Marshall joined as a full-time staff lawyer in 1936. There, his law school mentors became colleagues in the fight for equal rights for all Americans under the law.

Justice Marshall's name first appeared on a brief in this Court in 1940, in the case of *Chambers* v. *Florida.* He presented his first oral argument in this Court three years later in *Adams* v. *United States,* besting the United States on a technical point of federal jurisdiction over criminal conduct. From that year through his departure from the NAACP Legal Defense Fund in 1961, Marshall argued sixteen times before this Court, in cases whose names read today like a map of crossroads on the journey to equality: *Smith* v. *Allwright,* striking down "white primaries" that kept black Americans disenfranchised; *Morgan* v. *Virginia,* forbidding enforcement of state segregation laws on buses and trains travelling in interstate commerce; *Patton* v. *Mississippi,* invalidating convictions returned by juries from which African-Americans had been systematically excluded; *Sipuel* v. *Board of Regents* and *Sweatt* v. *Painter,* requiring the admission of qualified black students to previously all-white state law schools; *McGhee* v. *Sipes,* reported as *Shelley* v. *Kraemer,* forbidding state enforcement of restrictive racial covenants in land deeds; *Boynton* v. *Virginia,* holding that refusing service to a black man at a public restaurant in a bus terminal violated the Interstate Commerce Act; and, of course, *Brown* v. *Board of Education* and *Cooper* v. *Aaron,* in which this Court finally acknowledged that "separate" could not be "equal," and rejected the constitutional doctrine that had justified *de jure* segregation.

After the triumph of the *Brown* victory, Marshall was forced to endure the heavy blow of the death from cancer of his first wife, known affectionately as "Buster." During the period of continued frenetic activity that followed, however, it was his good fortune to meet and marry Cecilia Suyat, his partner and companion for the remainder of his life, and to have two fine sons, Thurgood Jr. and John William.

In 1961 President Kennedy nominated Marshall to a seat on the United States Court of Appeals for the Second Circuit—only the second African-American to be named to the federal appellate bench. The Senate approved the nomination almost a year later, after a bruising battle that reflected not upon the qualifications of the nominee, but rather upon the power and prejudices of his political opponents. In his relatively brief tenure on the Court of Appeals, Judge Marshall authored, by one count, 118 majority opinions—not one of which was reversed.

Judge Marshall left the Court of Appeals in 1964, when President Johnson called upon him to put his formidable powers of advocacy to use before this Court once again, this time as Solicitor General of the United States. In his three years in that office, Solicitor General Marshall argued nineteen additional cases before this Court. These cases reflected the full range of the government's business, from the assessment of estate taxes, to the interrelationship between judicial and administrative authority, to the complexities of securities and antitrust law. Several, however, reflected his continuing passion for the protection and advancement of civil rights.

In *Harper* v. *Virginia State Board of Elections,* for example, the United States as *amicus curiae* successfully urged the Court to invalidate poll taxes that burdened the right to vote. In *United States* v. *Guest* and *United States* v. *Price,* the government successfully urged reinstatement under the federal criminal civil rights statutes of indictments brought against state officers and private citizens who cooperated in the violation of other citizens' civil rights, including those accused of the abduction and murder of civil rights workers James Chaney, Michael Schwerner and Andrew Goodman. In *Katzenbach* v. *Morgan,* the Court upheld, at the Solicitor General's behest, the validity of the Voting Rights Act's prohibition on disenfranchisement, through an English literacy test, of voters educated in Puerto Rican schools; and in *Reit-*

man v. *Mulkey,* the Court ultimately accepted the position supported by the United States, as *amicus curiae,* that the voters of a State could not enshrine in their fundamental law a public endorsement of private discrimination. Finally, the Solicitor General argued the government's position in *Westover* v. *United States,* a companion case to *Miranda* v. *Arizona*—perhaps the only case of his career which the future Justice may not have been altogether sorry to see his client lose.

On June 13, 1967, President Johnson nominated Thurgood Marshall to fill the vacancy on this Court created by the retirement of Justice Tom Clark. The first African-American to join this Court, Justice Marshall took his seat on October 2, 1967. In his 24 terms on the Court, the Justice delivered a total of 769 opinions, including 322 majority or plurality opinions, 84 concurrences, and 363 dissents. In every case, he could be counted on to combine a deep respect for the law and for the institutional role of the Court, with an equally deep appreciation of how both the law and the Court's decisions actually affected real people in an uncloistered world.

Justice Marshall's first opinion for the Court reflected his abiding concern that criminal defendants be afforded the professional assistance and procedural protections that would assure that justice was being done in the courts. In *Mempa* v. *Rhay,* he spoke for a unanimous Court in holding that the Court's earlier decision in *Gideon* v. *Wainwright,* requiring appointment of counsel for indigent defendants in felony cases, applied at "every stage of a criminal proceeding where substantial rights of a criminal accused may be affected," including a post-probation sentencing proceeding. Similarly, his opinion for the Court in *Bounds* v. *Smith* confirmed that prison authorities were required to make their prisoners' right of access to the courts meaningful—while reserving to those authorities appropriate discretion to determine whether they would do so by providing adequate law libraries, furnishing professional assistance, or through some other means.

Even when he found himself in disagreement with the Court's holdings in criminal matters, Justice Marshall could write eloquently to remind us all that as eternal vigilance is the price of liberty, so vigilant protection of the rights of others is the price that we must be prepared to pay to preserve the rights we take for granted for ourselves. In *United States* v. *Salerno,* for example, he dissented from the Court's holding that Congress and the courts could constitutionally provide for the pre-trial detention of certain defendants deemed to present a threat to the public safety. Whatever our views on that particular issue, we can all recognize the wisdom of Justice Marshall's warning that:

> "Our Constitution, whose construction began two centuries ago, can shelter us forever from the evils of . . . unchecked power. . . . But it cannot protect us if we lack the courage, and the self-restraint, to protect ourselves."

Although a believer in consensus, compromise, and precedent, Justice Marshall could be implacable when his conscience and his legal judgment led him to conclude that one of this Court's conclusions was in error. His long and scholarly concurring opinion in *Furman* v. *Georgia* set forth his carefully considered view that capital punishment was excessive, unnecessary, and morally unacceptable. Having reached that conclusion, he steadfastly refused to depart from it during the remainder of his tenure on the Court, consistently dissenting in cases where the Court upheld imposition of the death penalty, and from innumerable denials of certiorari in capital cases.

Justice Marshall retained, of course, advocate Marshall's pressing interest in issues of equal protection of the laws and the safeguarding of fundamental rights. In his second term on the Court the new Justice delivered the opinion in *Stanley* v. *Georgia,* holding that a person could not be prosecuted for mere possession of obscene material in his own home. Rejecting what he termed "the assertion that the State has the right to control the moral content of a person's thoughts," he made clear that

> "[i]f the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."

A few years later, Justice Marshall wrote for the Court in striking down more than minimal state residency requirements imposed on a citizen's right to vote. He supported the enforcement of a constitutional right of privacy, and argued in dissent for a fundamental right to childhood education, and for close constitutional scrutiny of legislative schemes that he believed denied some citizens equal treatment or opportunity solely on the basis of their wealth. In his early years on the Court he lent his powerful voice and personal experience to its consideration of cases involving the continuing struggle for desegregation; and when he believed that the Court had strayed from the correct path on those issues or in cases involving related questions of affirmative, race-conscious remedies for past discrimination, he did not hesitate to raise that voice in public dissent.

Justice Marshall's contributions to the work of the Court extended, of course, far beyond cases dealing with criminal prosecutions and civil rights. During his time on the Court, he authored important opinions in areas as diverse as securities law, federal environmental law, Indian law, and tax law. In all contexts, his fundamental concern for ensuring both fair procedures and substantial justice—and his sense of the law as functional and evolving, rather than static and formalistic—remained steadfast.

In *Shaffer* v. *Heitner*, for example, Justice Marshall led the Court in holding that defendants could not be held to answer to suit in Delaware merely because they owned stock and other intangible assets with a nominal legal situs in that State. His opinion carefully traced the historical development of limitations on state court jurisdiction, and concluded that the functional standard that had gradually evolved for purposes of *in personam* jurisdiction, focusing on "the relationship among the defendant, the forum, and the litigation," should be applied to *in rem* jurisdiction as well. In adopting that standard, he wrote for the Court that:

> "'[T]raditional notions of fair play and substantial justice' can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures that are inconsistent with the basic values of our constitutional heritage. . . . The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. Its continued acceptance would serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant."

That willingness to regard legal history and traditions with a respectful but sharp eye, and to modify or reject them forthrightly if they no longer served their purposes in the modern context, was characteristic of Justice Marshall's jurisprudence. He believed deeply in the law; but he saw the law not as an impersonal abstraction, but as a living instrument in the service of a living people. In reflecting on the bicentennial of the United States Constitution, Justice Marshall cautioned pointedly that:

> "We must be careful, when focusing on the events which took place in Philadelphia two centuries ago, that we not overlook the momentous events which followed, and thereby lose our proper sense of perspective. If we seek, instead, a sensitive understanding of the Constitution's inherent defects, and its promising evolution through 200 years of history, [w]e will see that the true miracle was not the birth of the Constitution, but its life."

Indeed, as the Justice again reminded us, while precarious and imperfect in its origins, "[o]ver 200 years [the Constitution] has slowly, *through our efforts*, grown more durable, more expansive, and more just."

Both at the Bar of this Court and on its bench, Thurgood Marshall played an uncommonly important and historic role in those efforts. Were he here now, he would, I think, admonish us to remember that the great work is not finished. His labors may be concluded, but he has left the living law, and the Constitution, in our care.

MR. CHIEF JUSTICE, on behalf of the lawyers of this Nation and, in particular, of the Bar of this Court, I respectfully request that the resolutions presented to you in honor and celebration of the memory of Justice Thurgood Marshall be accepted by the Court, and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

THE CHIEF JUSTICE said:

Ms. Reno and General Days, the Court thanks you on behalf of the Bar for your presentation today in memory of our late colleague and friend, Justice Marshall.

We ask that you convey to Chairman Louis H. Pollak and the members of the Committee on Resolutions our profound appreciation for these Resolutions. Your motion that they be made part of the permanent record of the Court is hereby granted.

Thurgood Marshall's service to the public spanned sixty years, twenty-four as an Associate Justice of the Supreme Court of the United States. For almost a quarter of a century he was an important voice in shaping the decisional law of the Supreme Court. His contributions to the Court, and especially to American Constitutional law, demonstrate his dedication, desire and insightful perspective on the key issues of our time. His legacy of decisions as a jurist speaks for itself.

In his twenty-four years on the Supreme Court bench, Justice Marshall wrote 322 full opinions for the Court, 84 concurrences and 363 dissents. Although chiefly known for decisions championing the rights of indigent litigants and criminal defendants which both of you have adverted to in your presentations, his influence extended well beyond those issues. He authored, for example, in the opinion for the Court in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, and *FCC* v. *Florida Power Corp.*, watershed decisions interpreting the Constitution's prohibition against the governmental taking of private property without just compensation. These cases show how Justice Marshall contributed across a wide range of constitutional law.

The great majority of Supreme Court Justices are almost always remembered for their contributions to constitutional law as a member of this Court. Justice Marshall, however, is unique because of his contributions to constitutional law before becoming a member of the Court were so significant. Beginning with his solo practice in Baltimore in the early 1930s, and extending through his tenure as chief legal counsel for the NAACP Legal Defense and Education Fund, he became a champion of minorities, the poor, and individual rights. He fought many rounds in the battle against school segregation, a battle which culminated with his victory in the case of *Brown* v. *Board of Education.*

Justice Marshall argued 31 additional cases before this Court, thirteen as a private attorney and eighteen as Solicitor General of the United States. He won twenty-eight of those cases. Included in those cases are some that both of you mentioned, *Smith* v. *Allwright, Shelley* v. *Kraemer,* and *Sweatt* v. *Painter.* These efforts alone would entitle him to a prominent place in American history had he never entered upon judicial service.

We who sat with him during the time on the Court learned to value his wise counsel in Conference. We also looked forward to those occasions on which he would recount some of his experiences as a civil rights lawyer in often bitterly hostile towns and distinctly unfriendly courtrooms. He had the remarkable facility—not given to most storytellers—of not re-telling the same story to the same audience. Many of these stories had a humorous twist to them, but they also gave us a sense of what he had been up against in many of his cases. His forays to represent his clients required not only diligence and legal skill, but physical courage of a high order.

As a result of his career as a lawyer and judge, Thurgood Marshall left an indelible mark not just upon the law but upon his country. Inscribed above the front entrance to this Court building are the words, “Equal Justice Under Law.” Surely no individual did more to make these words a reality than Thurgood Marshall.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1993

DAY *v.* DAY

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 92–8788. Decided October 12, 1993*

Since this Court's Rule 39.8 was first invoked in June 1993 to deny *pro se* petitioner Day *in forma pauperis* status, he has filed eight more petitions for certiorari, all of them demonstrably frivolous.

Held: Day is denied leave to proceed *in forma pauperis* in the instant cases, and the Clerk is directed not to accept any further petitions for certiorari from him in noncriminal matters unless he pays the required docketing fee and submits his petition in compliance with this Court's Rule 33. This order will free the Court's limited resources to consider the claims of those petitioners who, unlike Day, have not abused the certiorari process.

Motions denied.

PER CURIAM.

Pro se petitioner Roy A. Day requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Day is allowed until November 2, 1993, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with

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*Together with No. 92–8792, *Day* v. *Bekiempis*, No. 92–8888, *Day* v. *Heinrich et al.*, No. 92–8905, *Day* v. *GAF Building Materials Corp.*, No. 92–8906, *Day* v. *Clinton et al.*, No. 92–9018, *Day* v. *Black et al.*, No. 92–9101, *Day* v. *Deason et al.*, and No. 93–5430, *Day* v. *Day*, also on motions for leave to proceed *in forma pauperis*.

this Court's Rule 33. We also direct the Clerk not to accept any further petitions for certiorari from Day in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.

Day is an abuser of this Court's certiorari process. We first invoked Rule 39.8 to deny Day *in forma pauperis* status last June. See *In re Day,* 509 U. S. 902 (1993). At that time he had filed 27 petitions in the past nine years. Although Day was granted *in forma pauperis* status to file these petitions, all were denied without recorded dissent. Since we first denied him *in forma pauperis* status last June, he has filed eight more petitions for certiorari with this Court—all of them demonstrably frivolous.

As we have recognized, "[e]very paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice." *In re McDonald,* 489 U. S. 180, 184 (1989) *(per curiam).* Consideration of Day's repetitious and frivolous petitions for certiorari does not promote this end.

We have entered orders similar to the present one on previous occasions to prevent *pro se* petitioners from filing repetitious and frivolous requests for certiorari, see *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992) *(per curiam),* and repetitious and frivolous requests for extraordinary relief. See *In re Sindram,* 498 U. S. 177 (1991) *(per curiam); In re McDonald, supra.*

Day's refusal to heed our earlier warning requires us to take this step. His abuse of the writ of certiorari has been in noncriminal cases, and so we limit our sanction accordingly. The order therefore will not prevent Day from petitioning to challenge criminal sanctions which might be imposed on him. But it will free this Court's limited resources to consider the claims of those petitioners who have not abused our certiorari process.

It is so ordered.

JUSTICE STEVENS, dissenting.

Adhering to the views expressed in the dissenting opinions in *Brown* v. *Herald Co.*, 464 U. S. 928, 931 (1983), *In re McDonald*, 489 U. S. 180, 185 (1989), and *Wrenn* v. *Benson*, 490 U. S. 89, 92 (1989), I would deny these petitions for writs of certiorari without reaching the merits of the motions to proceed *in forma pauperis*. In the future, however, I shall not encumber the record by noting my dissent from similar orders denying leave to proceed *in forma pauperis*, absent exceptional circumstances.

IN RE SASSOWER

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 92–8933. Decided October 12, 1993*

In the three years prior to this Term, *pro se* petitioner Sassower had filed 11 petitions. However, in the last four months, he has suddenly increased his filings and now has 10 petitions pending before this Court, all of them patently frivolous.

Held: Sassower is denied leave to proceed *in forma pauperis* in the instant cases, pursuant to this Court's Rule 39.8, and the Clerk is directed not to accept any further petitions for certiorari nor any petitions for extraordinary writs from him in noncriminal matters, unless he pays the required docketing fee and submits his petition in compliance with this Court's Rule 33. For the important reasons discussed in *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1, *In re Sindram,* 498 U. S. 177, and *In re McDonald,* 489 U. S. 180, the Court feels compelled to enter this order, which will allow the Court to devote its limited resources to the claims of petitioners who, unlike Sassower, have not abused the Court's process.

Motions denied.

PER CURIAM.

Pro se petitioner George Sassower requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Sassower is allowed until November 2, 1993, within which to pay the docketing fees required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33. For the reasons explained below, we also direct the Clerk not to accept any further petitions for certiorari nor any petitions for extraor-

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*Together with No. 92–8934, *Sassower* v. *Mead Data Central Inc. et al.,* No. 92–9228, *Sassower* v. *Crites et al.,* No. 93–5045, *Sassower* v. *Kriendler & Relkin et al.,* No. 93–5127, *Sassower* v. *Feltman et al.,* No. 93–5128, *Sassower* v. *Puccini Clothes et al.,* No. 93–5129, *Sassower* v. *A. R. Fuels, Inc., et al.,* No. 93–5252, *Sassower* v. *Reno,* No. 93–5358, *Sassower* v. *Abrams, Attorney General of New York,* and No. 93–5596, *In re Sassower,* also on motions for leave to proceed *in forma pauperis.*

dinary writs from Sassower in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.

Prior to this Term, Sassower had filed 11 petitions in this Court over the last three years. Although Sassower was granted *in forma pauperis* status to file these petitions, all were denied without recorded dissent.* During the last four months, Sassower has suddenly increased his filings. He currently has 10 petitions pending before this Court—all of them patently frivolous.

Although we have not previously denied Sassower *in forma pauperis* status pursuant to Rule 39.8, we think it appropriate to enter an order pursuant to *Martin* v. *District of Columbia Court of Appeals,* 506 U. S. 1 (1992). In both *In re Sindram,* 498 U. S. 177 (1991) *(per curiam),* and *In re McDonald,* 489 U. S. 180 (1989) *(per curiam),* we entered orders similar to this one without having previously denied petitioners' motions to proceed *in forma pauperis* under Rule 39.8. For the important reasons discussed in *Martin, Sindram,* and *McDonald,* we feel compelled to enter the order today barring prospective filings from Sassower.

Sassower's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and so we limit our sanction accordingly. The order therefore will not prevent Sassower from petitioning to challenge criminal sanctions which might be imposed on him. The order, how-

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*See *Sassower* v. *New York,* 499 U. S. 966 (1991) (certiorari); *In re Sassower,* 499 U. S. 935 (1991) (mandamus/prohibition); *In re Sassower,* 499 U. S. 935 (1991) (mandamus/prohibition); *Sassower* v. *Mahoney,* 498 U. S. 1108 (1991); *In re Sassower,* 499 U. S. 904 (1991) (mandamus/prohibition); *In re Sassower,* 498 U. S. 1081 (1991) (habeas corpus); *In re Sassower,* 498 U. S. 1081 (1991) (mandamus/prohibition); *Sassower* v. *United States Court of Appeals for D. C. Cir.,* 498 U. S. 1094 (1991) (certiorari); *Sassower* v. *Brieant,* 498 U. S. 1094 (1991) (certiorari); *Sassower* v. *Thornburgh,* 498 U. S. 1036 (1991) (certiorari); *Sassower* v. *Dillon,* 493 U. S. 979 (1989) (certiorari).

ever, will allow this Court to devote its limited resources to the claims of petitioners who have not abused our process.

It is so ordered.

JUSTICE THOMAS and JUSTICE GINSBURG took no part in the consideration or decision of the motion in No. 93–5252.

FLORENCE COUNTY SCHOOL DISTRICT FOUR ET AL. *v.* CARTER, A MINOR, BY AND THROUGH HER FATHER AND NEXT FRIEND, CARTER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 91–1523. Argued October 6, 1993—Decided November 9, 1993

After respondent Shannon Carter, a student in petitioner public school district, was classified as learning disabled, school officials met with her parents to formulate an individualized education program (IEP), as required under the Individuals with Disabilities Education Act (IDEA or Act), 20 U. S. C. § 1400 *et seq.* Shannon's parents requested a hearing to challenge the proposed IEP's appropriateness. In the meantime, Shannon's parents enrolled her in Trident Academy, a private school specializing in educating children with disabilities. After the state and local educational authorities concluded that the IEP was adequate, Shannon's parents filed this suit, claiming that the school district had breached its duty under IDEA to provide Shannon with a "free appropriate public education," § 1401(a)(18), and seeking reimbursement for tuition and other costs incurred at Trident. The District Court ruled in the parents' favor, holding that the proposed IEP violated IDEA, and that the education Shannon received at Trident was "appropriate" and in substantial compliance with IDEA's substantive requirements, even though the school did not comply with all of the Act's procedures. In affirming, the Court of Appeals rejected the school district's argument that reimbursement is never proper when the parents choose a private school that is not approved by the State or that does not comply with all of the requirements of § 1401(a)(18).

Held: A court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under IDEA and put the child in a private school that provides an education that is otherwise proper under IDEA, but does not meet all of § 1401(a)(18)'s requirements. Pp. 12–16.

(a) In *School Comm. of Burlington* v. *Department of Ed. of Mass.*, 471 U. S. 359, 369–370, the Court recognized the right of parents who disagree with a proposed IEP to unilaterally withdraw their child from public school and place the child in private school, and held that IDEA's grant of equitable authority empowers a court to order school authorities retroactively to reimburse the parents if the court ultimately determines that the private placement, rather than the proposed IEP, is proper under the Act. P. 12.

(b) Trident's failure to meet § 1401(a)(18)'s definition of a "free appropriate public education" does not bar Shannon's parents from reimbursement, because the section's requirements cannot be read as applying to parental placements. The § 1401(a)(18) requirements that the education be "provided . . . under public supervision and direction," and that the IEP be designed by "a representative of the local educational agency" and "establish[ed]," "revise[d]," and "review[ed]" by the agency, will never be met in the context of a parental placement. Therefore to read them as applying to parental placements would effectively eliminate the right of unilateral withdrawal recognized in *Burlington,* and would defeat IDEA's purpose of ensuring that children with disabilities receive an education that is both appropriate and free. Similarly, the § 1401(a)(18)(B) requirement that the school meet the standards of the state educational agency does not apply to private parental placements. It would be inconsistent with the Act's goals to forbid parents to educate their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place. Parents' failure to select a state-approved program in favor of an unapproved option does not itself bar reimbursement. Pp. 12–15.

(c) The school district's argument that allowing reimbursement for parents such as Shannon's puts an unreasonable burden on financially strapped local educational authorities is rejected. Reimbursement claims need not worry school officials who conform to IDEA's mandate to either give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. Moreover, parents who unilaterally change their child's placement during the pendency of IDEA review proceedings are entitled to reimbursement *only* if a federal court concludes both that the public placement violated IDEA and that the private placement was proper under the Act. Finally, total reimbursement will not be appropriate if a court fashioning discretionary equitable relief under IDEA determines that the cost of the private education was unreasonable. Pp. 15–16.

950 F. 2d 156, affirmed.

O'CONNOR, J., delivered the opinion for a unanimous Court.

Donald B. Ayer argued the cause for petitioners. With him on the briefs were *Beth Heifetz* and *Bruce E. Davis.*

Peter W. D. Wright argued the cause for respondent. With him on the brief was *Nancy C. McCormick.*

Amy L. Wax argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Days, Acting Assistant Attorney General Schiffer, Deputy Solicitor General Wallace, William Kanter,* and *John P. Schnitker.**

JUSTICE O'CONNOR delivered the opinion of the Court.

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.* (1988 ed. and Supp. IV), requires States to provide disabled children with a "free appropriate public education," § 1401(a)(18). This case presents the question whether a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under IDEA and put the child in a private school that provides an education that is otherwise proper under IDEA, but does not meet all the requirements of § 1401(a)(18). We hold that the court may order such reimbursement, and therefore affirm the judgment of the Court of Appeals.

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *J. Joseph Curran, Jr.,* Attorney General of Maryland, and *Andrew H. Baida* and *Joann Goedert,* Assistant Attorneys General, and by the Attorneys General for their respective jurisdictions as follows: *Grant Woods* of Arizona, *Michael J. Bowers* of Georgia, *Richard Ieyoub* of Louisiana, *Michael E. Carpenter* of Maine, *Joseph P. Mazurek* of Montana, *Robert J. Del Tufo* of New Jersey, *Tom Udall* of New Mexico, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *Theodore R. Kulongoski* of Oregon, *T. Travis Medlock* of South Carolina, *Mark Barnett* of South Dakota, *Charles Burson* of Tennessee, *R. Paul Van Dam* of Utah, *Stephen D. Rosenthal* of Virginia, and *Joseph B. Meyer* of Wyoming; for the National League of Cities et al. by *Richard Ruda;* and for the National School Boards Association et al. by *August W. Steinhilber, Thomas A. Shannon,* and *Gwendolyn H. Gregory.*

Briefs of *amici curiae* urging affirmance were filed for the National Head Injury Foundation, Inc., by *Craig Denmead* and *Kevin M. Maloney;* for the Learning Disability Association of America et al. by *Mark S. Partin* and *Reed Martin;* and for the National Alliance for the Mentally Ill et al. by *Steven Ney* and *Andrew S. Penn.*

I

Respondent Shannon Carter was classified as learning disabled in 1985, while a ninth grade student in a school operated by petitioner Florence County School District Four. School officials met with Shannon's parents to formulate an individualized education program (IEP) for Shannon, as required under IDEA. 20 U. S. C. §§ 1401(a)(18) and (20), 1414(a)(5) (1988 ed. and Supp. IV). The IEP provided that Shannon would stay in regular classes except for three periods of individualized instruction per week, and established specific goals in reading and mathematics of four months' progress for the entire school year. Shannon's parents were dissatisfied, and requested a hearing to challenge the appropriateness of the IEP. See § 1415(b)(2). Both the local educational officer and the state educational agency hearing officer rejected Shannon's parents' claim and concluded that the IEP was adequate. In the meantime, Shannon's parents had placed her in Trident Academy, a private school specializing in educating children with disabilities. Shannon began at Trident in September 1985 and graduated in the spring of 1988.

Shannon's parents filed this suit in July 1986, claiming that the school district had breached its duty under IDEA to provide Shannon with a "free appropriate public education," § 1401(a)(18), and seeking reimbursement for tuition and other costs incurred at Trident. After a bench trial, the District Court ruled in the parents' favor. The court held that the school district's proposed educational program and the achievement goals of the IEP "were wholly inadequate" and failed to satisfy the requirements of the Act. App. to Pet. for Cert. 27a. The court further held that "[a]lthough [Trident Academy] did not comply with all of the procedures outlined in [IDEA]," the school "provided Shannon an excellent education in substantial compliance with all the substantive requirements" of the statute. *Id.*, at 37a. The court found that Trident "evaluated Shannon quarterly, not yearly as mandated in [IDEA], it provided Shannon with low teacher-student ratios, and it developed a plan which allowed Shannon to receive passing marks and progress from grade to grade." *Ibid.* The court also credited the findings of its own expert, who determined that Shannon had made "significant progress" at Trident and that her reading comprehension had risen three grade levels in her three years at the school. *Id.*, at 29a. The District Court concluded that Shannon's education was "appropriate" under IDEA, and that Shannon's parents were entitled to reimbursement of tuition and other costs. *Id.*, at 37a.

The Court of Appeals for the Fourth Circuit affirmed. 950 F. 2d 156 (1991). The court agreed that the IEP proposed by the school district was inappropriate under IDEA. It also rejected the school district's argument that reimbursement is never proper when the parents choose a private school that is not approved by the State or that does not comply with all the terms of IDEA. According to the Court of Appeals, neither the text of the Act nor its legislative history imposes a "requirement that the private school be approved by the state in parent-placement reimbursement cases." *Id.*, at 162. To the contrary, the Court of Appeals concluded, IDEA's state-approval requirement applies only when a child is placed in a private school by public school officials. Accordingly, "when a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits.'" *Id.*, at 163, quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 207 (1982).

The court below recognized that its holding conflicted with *Tucker* v. *Bay Shore Union Free School Dist.*, 873 F. 2d 563, 568 (1989), in which the Court of Appeals for the Second Circuit held that parental placement in a private school cannot be proper under the Act unless the private school in question meets the standards of the state education agency. We granted certiorari, 507 U. S. 907 (1993), to resolve this conflict among the Courts of Appeals.

II

In *School Comm. of Burlington* v. *Department of Ed. of Mass.*, 471 U. S. 359, 369 (1985), we held that IDEA's grant of equitable authority empowers a court "to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act." Congress intended that IDEA's promise of a "free appropriate public education" for disabled children would normally be met by an IEP's provision for education in the regular public schools or in private schools chosen jointly by school officials and parents. In cases where cooperation fails, however, "parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement." *Id.*, at 370. For parents willing and able to make the latter choice, "it would be an empty victory to have a court tell them several years later that they were right but that these expenditures could not in a proper case be reimbursed by the school officials." *Ibid.* Because such a result would be contrary to IDEA's guarantee of a "free appropriate public education," we held that "Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case." *Ibid.*

As this case comes to us, two issues are settled: (1) the school district's proposed IEP was inappropriate under IDEA, and (2) although Trident did not meet the § 1401(a)(18) requirements, it provided an education otherwise proper under IDEA. This case presents the narrow question whether Shannon's parents are barred from reimbursement because the private school in which Shannon enrolled did not meet the § 1401(a)(18) definition of a "free appropriate public education." * We hold that they are not, because § 1401(a)(18)'s requirements cannot be read as applying to parental placements.

Section 1401(a)(18)(A) requires that the education be "provided at public expense, under public supervision and direction." Similarly, § 1401(a)(18)(D) requires schools to provide an IEP, which must be designed by "a representative of the local educational agency," 20 U. S. C. § 1401(a)(20) (1988 ed., Supp. IV), and must be "establish[ed]," "revise[d]," and "review[ed]" by the agency, § 1414(a)(5). These requirements do not make sense in the context of a parental placement. In this case, as in all *Burlington* reimbursement cases, the parents' rejection of the school district's proposed IEP is the very reason for the parents' decision to put their child in a private school. In such cases, where the private placement has necessarily been made over the school district's objection, the private school education will not be under "public supervision and direction." Accordingly, to read the § 1401(a)(18) requirements as applying to parental placements would effectively eliminate the right of unilateral withdrawal recognized in *Burlington*. Moreover, IDEA was intended to ensure that children with disabilities receive an education that is both appropriate and free. *Burlington*, *supra*, at 373. To read the provisions of § 1401(a)(18) to bar reimbursement in the circumstances of this case would defeat this statutory purpose.

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*Section 1401(a)(18) defines "free appropriate public education" as "special education and related services that—

"(A) have been provided at public expense, under public supervision and direction, and without charge,

"(B) meet the standards of the State educational agency,

"(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

"(D) are provided in conformity with the individualized education program . . . ."

Nor do we believe that reimbursement is necessarily barred by a private school's failure to meet state education standards. Trident's deficiencies, according to the school district, were that it employed at least two faculty members who were not state certified and that it did not develop IEP's. As we have noted, however, the § 1401(a)(18) requirements—including the requirement that the school meet the standards of the state educational agency, § 1401(a)(18)(B)—do not apply to private parental placements. Indeed, the school district's emphasis on state standards is somewhat ironic. As the Court of Appeals noted, "it hardly seems consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." 950 F. 2d, at 164. Accordingly, we disagree with the Second Circuit's theory that "a parent may not obtain reimbursement for a unilateral placement if that placement was in a school that was not on [the State's] approved list of private" schools. *Tucker,* 873 F. 2d, at 568 (internal quotation marks omitted). Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement.

Furthermore, although the absence of an approved list of private schools is not essential to our holding, we note that parents in the position of Shannon's have no way of knowing at the time they select a private school whether the school meets state standards. South Carolina keeps no publicly available list of approved private schools, but instead approves private school placements on a case-by-case basis. In fact, although public school officials had previously placed three children with disabilities at Trident, see App. to Pet. for Cert. 28a, Trident had not received blanket approval from the State. South Carolina's case-by-case approval system meant that Shannon's parents needed the cooperation of state officials before they could know whether Trident was state approved. As we recognized in *Burlington*, such cooperation is unlikely in cases where the school officials disagree with the need for the private placement. 471 U. S., at 372.

III

The school district also claims that allowing reimbursement for parents such as Shannon's puts an unreasonable burden on financially strapped local educational authorities. The school district argues that requiring parents to choose a state-approved private school if they want reimbursement is the only meaningful way to allow States to control costs; otherwise States will have to reimburse dissatisfied parents for any private school that provides an education that is proper under the Act, no matter how expensive it may be.

There is no doubt that Congress has imposed a significant financial burden on States and school districts that participate in IDEA. Yet public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.

Moreover, parents who, like Shannon's, "unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk." *Burlington, supra*, at 373–374. They are entitled to reimbursement *only* if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act.

Finally, we note that once a court holds that the public placement violated IDEA, it is authorized to "grant such relief as the court determines is appropriate." 20 U. S. C. § 1415(e)(2). Under this provision, "equitable considerations are relevant in fashioning relief," *Burlington,* 471 U. S., at 374, and the court enjoys "broad discretion" in so doing, *id.,* at 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.

Accordingly, we affirm the judgment of the Court of Appeals.

So ordered.

HARRIS *v.* FORKLIFT SYSTEMS, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 92–1168. Argued October 13, 1993—Decided November 9, 1993

Petitioner Harris sued her former employer, respondent Forklift Systems, Inc., claiming that the conduct of Forklift's president toward her constituted "abusive work environment" harassment because of her gender in violation of Title VII of the Civil Rights Act of 1964. Declaring this to be "a close case," the District Court found, among other things, that Forklift's president often insulted Harris because of her gender and often made her the target of unwanted sexual innuendos. However, the court concluded that the comments in question did not create an abusive environment because they were not "so severe as to . . . seriously affect [Harris'] psychological well-being" or lead her to "suffe[r] injury." The Court of Appeals affirmed.

Held: To be actionable as "abusive work environment" harassment, conduct need not "seriously affect [an employee's] psychological well-being" or lead the plaintiff to "suffe[r] injury." Pp. 21–23.

(a) The applicable standard, here reaffirmed, is stated in *Meritor Savings Bank, FSB* v. *Vinson,* 477 U. S. 57: Title VII is violated when the workplace is permeated with discriminatory behavior that is sufficiently severe or pervasive to create a discriminatorily hostile or abusive working environment, *id.,* at 64, 67. This standard requires an objectively hostile or abusive environment—one that a reasonable person would find hostile or abusive—as well as the victim's subjective perception that the environment is abusive. Pp. 21–22.

(b) Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances, which may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is relevant in determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required. Pp. 22–23.

(c) Reversal and remand are required because the District Court's erroneous application of the incorrect legal standard may well have influenced its ultimate conclusion that the work environment was not intimidating or abusive to Harris, especially given that the court found this to be a "close case." P. 23.

976 F. 2d 733, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court. SCALIA, J., *post*, p. 24, and GINSBURG, J., *post*, p. 25, filed concurring opinions.

Irwin Venick argued the cause for petitioner. With him on the briefs were *Robert Belton* and *Rebecca L. Brown.*

Jeffrey P. Minear argued the cause for the United States et al. as *amici curiae* in support of petitioner. With him on the brief were *Acting Solicitor General Bryson, Acting Assistant Attorney General Turner, Dennis J. Dimsey, Thomas E. Chandler, Donald R. Livingston, Gwendolyn Young Reams,* and *Carolyn L. Wheeler.*

Stanley M. Chernau argued the cause for respondent. With him on the brief were *Paul F. Mickey, Jr., Michael A. Carvin,* and *W. Eric Pilsk.**

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider the definition of a discriminatorily "abusive work environment" (also known as a "hostile work

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Steven R. Shapiro, John A. Powell,* and *Lois C. Waldman;* for Feminists for Free Expression by *Cathy E. Crosson;* for the NAACP Legal Defense and Educational Fund, Inc., et al. by *Elaine R. Jones* and *Eric Schnapper;* for the National Conference of Women's Bar Associations et al. by *Edith Barnett;* for the National Employment Lawyers Association by *Margaret A. Harris, Katherine L. Butler,* and *William J. Smith;* for the NOW Legal Defense and Education Fund et al. by *Deborah A. Ellis, Sarah E. Burns, Richard F. Ziegler,* and *Shari Siegel;* for the Southern States Police Benevolent Association et al. by *J. Michael McGuinness;* and for the Women's Legal Defense Fund et al. by *Carolyn F. Corwin, Judith L. Lichtman, Donna R. Lenhoff,* and *Susan Deller Ross.*

Robert E. Williams, Douglas S. McDowell, and *Ann Elizabeth Reesman* filed a brief for the Equal Employment Advisory Council as *amicus curiae* urging affirmance.

Briefs of *amici curiae* were filed for the American Psychological Association by *Dort S. Bigg;* and for the Employment Law Center et al. by *Patricia A. Shiu.*

environment") under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.* (1988 ed., Supp. III).

I

Teresa Harris worked as a manager at Forklift Systems, Inc., an equipment rental company, from April 1985 until October 1987. Charles Hardy was Forklift's president.

The Magistrate found that, throughout Harris' time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendos. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumb ass woman." App. to Pet. for Cert. A–13. Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris'] raise." *Id.*, at A–14. Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. *Ibid.* He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up. *Id.*, at A–14 to A–15. He made sexual innuendos about Harris' and other women's clothing. *Id.*, at A–15.

In mid-August 1987, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. *Id.*, at A–16. He also promised he would stop, and based on this assurance Harris stayed on the job. *Ibid.* But in early September, Hardy began anew: While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy . . . some [sex] Saturday night?" *Id.*, at A–17. On October 1, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct had created an abusive work environment for her because of her gender. The United States District Court for the Middle District of Tennessee, adopting the report and recommendation of the Magistrate, found this to be "a close case," *id.*, at A–31, but held that Hardy's conduct did not create an abusive environment. The court found that some of Hardy's comments "offended [Harris], and would offend the reasonable woman," *id.*, at A–33, but that they were not

> "so severe as to be expected to seriously affect [Harris'] psychological well-being. A reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance.
>
> "Neither do I believe that [Harris] was subjectively so offended that she suffered injury . . . . Although Hardy may at times have genuinely offended [Harris], I do not believe that he created a working environment so poisoned as to be intimidating or abusive to [Harris]." *Id.*, at A–34 to A–35.

In focusing on the employee's psychological well-being, the District Court was following Circuit precedent. See *Rabidue* v. *Osceola Refining Co.*, 805 F. 2d 611, 620 (CA6 1986), cert. denied, 481 U. S. 1041 (1987). The United States Court of Appeals for the Sixth Circuit affirmed in a brief unpublished decision. Judgt. order reported at 976 F. 2d 733 (1992).

We granted certiorari, 507 U. S. 959 (1993), to resolve a conflict among the Circuits on whether conduct, to be actionable as "abusive work environment" harassment (no *quid pro quo* harassment issue is present here), must "seriously affect [an employee's] psychological well-being" or lead the plaintiff to "suffe[r] injury." Compare *Rabidue* (requiring serious effect on psychological well-being); *Vance* v. *Southern Bell Telephone & Telegraph Co.*, 863 F. 2d 1503, 1510 (CA11 1989) (same); and *Downes* v. *FAA*, 775 F. 2d 288, 292 (CA Fed. 1985) (same), with *Ellison* v. *Brady*, 924 F. 2d 872, 877–878 (CA9 1991) (rejecting such a requirement).

II

Title VII of the Civil Rights Act of 1964 makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. § 2000e–2(a)(1). As we made clear in *Meritor Savings Bank, FSB* v. *Vinson,* 477 U. S. 57 (1986), this language "is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of disparate treatment of men and women' in employment," which includes requiring people to work in a discriminatorily hostile or abusive environment. *Id.,* at 64, quoting *Los Angeles Dept. of Water and Power* v. *Manhart,* 435 U. S. 702, 707, n. 13 (1978) (some internal quotation marks omitted). When the workplace is permeated with "discriminatory intimidation, ridicule, and insult," 477 U. S., at 65, that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," *id.,* at 67 (internal brackets and quotation marks omitted), Title VII is violated.

This standard, which we reaffirm today, takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. As we pointed out in *Meritor,* "mere utterance of an . . . epithet which engenders offensive feelings in a employee," *ibid.* (internal quotation marks omitted) does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.

But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological well-being, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality. The appalling conduct alleged in *Meritor*, and the reference in that case to environments "'so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers,'" *id.*, at 66, quoting *Rogers* v. *EEOC*, 454 F. 2d 234, 238 (CA5 1971), cert. denied, 406 U. S. 957 (1972), merely present some especially egregious examples of harassment. They do not mark the boundary of what is actionable.

We therefore believe the District Court erred in relying on whether the conduct "seriously affect[ed] plaintiff's psychological well-being" or led her to "suffe[r] injury." Such an inquiry may needlessly focus the factfinder's attention on concrete psychological harm, an element Title VII does not require. Certainly Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not limited to such conduct. So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, *Meritor*, *supra*, at 67, there is no need for it also to be psychologically injurious.

This is not, and by its nature cannot be, a mathematically precise test. We need not answer today all the potential questions it raises, nor specifically address the Equal Employment Opportunity Commission's new regulations on this subject, see 58 Fed. Reg. 51266 (1993) (proposed 29 CFR §§1609.1, 1609.2); see also 29 CFR §1604.11 (1993). But we can say that whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required.

III

Forklift, while conceding that a requirement that the conduct seriously affect psychological well-being is unfounded, argues that the District Court nonetheless correctly applied the *Meritor* standard. We disagree. Though the District Court did conclude that the work environment was not "intimidating or abusive to [Harris]," App. to Pet. for Cert. A–35, it did so only after finding that the conduct was not "so severe as to be expected to seriously affect plaintiff's psychological well-being," *id.*, at A–34, and that Harris was not "subjectively so offended that she suffered injury," *ibid.* The District Court's application of these incorrect standards may well have influenced its ultimate conclusion, especially given that the court found this to be a "close case," *id.*, at A–31.

We therefore reverse the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

So ordered.

JUSTICE SCALIA, concurring.

Meritor Savings Bank, FSB v. *Vinson,* 477 U. S. 57 (1986), held that Title VII prohibits sexual harassment that takes the form of a hostile work environment. The Court stated that sexual harassment is actionable if it is "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" *Id.,* at 67 (quoting *Henson* v. *Dundee,* 682 F. 2d 897, 904 (CA11 1982)). Today's opinion elaborates that the challenged conduct must be severe or pervasive enough "to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive." *Ante,* at 21.

"Abusive" (or "hostile," which in this context I take to mean the same thing) does not seem to me a very clear standard—and I do not think clarity is at all increased by adding the adverb "objectively" or by appealing to a "reasonable person[']s]" notion of what the vague word means. Today's opinion does list a number of factors that contribute to abusiveness, see *ante,* at 23, but since it neither says how much of each is necessary (an impossible task) nor identifies any single factor as determinative, it thereby adds little certitude. As a practical matter, today's holding lets virtually unguided juries decide whether sex-related conduct engaged in (or permitted by) an employer is egregious enough to warrant an award of damages. One might say that what constitutes "negligence" (a traditional jury question) is not much more clear and certain than what constitutes "abusiveness." Perhaps so. But the class of plaintiffs seeking to recover for negligence is limited to those who have suffered harm, whereas under this statute "abusiveness" is to be the test of whether legal harm has been suffered, opening more expansive vistas of litigation.

Be that as it may, I know of no alternative to the course the Court today has taken. One of the factors mentioned in the Court's nonexhaustive list—whether the conduct unreasonably interferes with an employee's work performance—would, if it were made an absolute test, provide greater guidance to juries and employers. But I see no basis for such a limitation in the language of the statute. Accepting *Meritor's* interpretation of the term "conditions of employment" as the law, the test is not whether work has been impaired, but whether working conditions have been discriminatorily altered. I know of no test more faithful to the inherently vague statutory language than the one the Court today adopts. For these reasons, I join the opinion of the Court.

JUSTICE GINSBURG, concurring.

Today the Court reaffirms the holding of *Meritor Savings Bank, FSB* v. *Vinson,* 477 U. S. 57, 66 (1986): "[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment." The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. See 42 U. S. C. § 2000e–2(a)(1) (declaring that it is unlawful to discriminate with respect to, *inter alia,* "terms" or "conditions" of employment). As the Equal Employment Opportunity Commission emphasized, see Brief for United States and Equal Employment Opportunity Commission as *Amici Curiae* 9–14, the adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment." *Davis* v. *Monsanto Chemical Co.,* 858 F. 2d 345, 349 (CA6 1988). It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to "ma[k]e it more difficult to do the job." See *ibid. Davis* concerned race-based discrimination, but that difference does not alter the analysis; except in the rare case in which a bona fide occupational qualification is shown, see *Automobile Workers* v. *Johnson Controls, Inc.*, 499 U. S. 187, 200–207 (1991) (construing 42 U. S. C. § 2000e–2(e)(1)), Title VII declares discriminatory practices based on race, gender, religion, or national origin equally unlawful.*

The Court's opinion, which I join, seems to me in harmony with the view expressed in this concurring statement.

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*Indeed, even under the Court's equal protection jurisprudence, which requires "an exceedingly persuasive justification" for a gender-based classification, *Kirchberg* v. *Feenstra*, 450 U. S. 455, 461 (1981) (internal quotation marks omitted), it remains an open question whether "classifications based upon gender are inherently suspect." See *Mississippi Univ. for Women* v. *Hogan*, 458 U. S. 718, 724, and n. 9 (1982).

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA *v.* U. S. PHILIPS CORP. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 92–1123. Argued October 12, 1993—Decided November 30, 1993

Petitioner Izumi Seimitsu Kogyo Kabushiki Kaisha was a party at the first trial in an action brought against it and respondent Windmere Corporation by respondent U. S. Philips Corporation, but was not a party to the second trial, in which Windmere prevailed. While the judgments from the second trial were on appeal, respondents reached a settlement and filed a joint motion to vacate the District Court's judgments. Izumi's motion to intervene in the appeal for purposes of opposing vacatur was denied by the Court of Appeals on the ground that Izumi was not a party to the action, and the court went on to find that vacatur was appropriate.

Held: The writ of certiorari is dismissed as improvidently granted. The single question Izumi presented to this Court for review is whether the courts of appeals should routinely vacate district court final judgments at the parties' request when cases are settled on appeal. However, in order to reach this question, the Court would have to address a question not raised by Izumi until its brief on the merits: whether the Court of Appeals improperly denied Izumi's motion to intervene. Since the latter question was neither presented in the petition for certiorari nor fairly included in the question that was presented, as required by this Court's Rule 14.1, it can be considered only if the Court deems this to be an exceptional case. The case bears scant resemblance to those cases in which the Court has made exceptions to the Rule's provisions, for it is unlikely that any new principle of law would be enunciated should review be undertaken. Moreover, faithful application of the Rule helps ensure that the Court is not tempted to engage in ill-considered decisions of relatively factbound issues not presented in the petition in order to reach the question on which certiorari was actually granted. It also informs those seeking review that the Court strongly disapproves the practice of smuggling additional questions into a case after certiorari is granted.

Certiorari dismissed. Reported below: 971 F. 2d 728.

Herbert H. Mintz argued the cause for petitioner. With him on the briefs were *Robert D. Litowitz, Jean Burke Fordis, David S. Forman,* and *William L. Androlia.*

Garrard R. Beeney argued the cause for respondents. With him on the brief were *William E. Willis, John L. Hardiman, Sheldon Karon,* and *Paul M. Dodyk.*

Thomas G. Hungar argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Bryson, Acting Assistant Attorney General Schiffer, Acting Deputy Solicitor General Kneedler, Leonard Schaitman,* and *John P. Schnitker.*[*]

PER CURIAM.

In order to reach the merits of this case, we would have to address a question that was neither presented in the petition for certiorari nor fairly included in the one question that was presented. Because we will consider questions not raised in the petition only in the most exceptional cases, and because we conclude this is not such a case, we dismiss the writ of certiorari as improvidently granted.

Petitioner was named as a defendant, along with respondent Windmere Corporation, in an action brought by respondent U. S. Philips Corporation in the District Court for the Southern District of Florida claiming that the defendants had infringed Philips' patent rights and engaged in unfair trade competition. Windmere counterclaimed for antitrust violations. At the first trial of the action, judgment was entered on a jury verdict for Philips on its patent infringement claim, and neither Izumi nor Windmere appealed. Philips also prevailed on Windmere's antitrust counterclaim, and the District Court ordered a new trial on the unfair competition claim. On Windmere's interlocutory appeal, the United States Court of Appeals for the Federal Circuit reversed the judgment on the antitrust counterclaim and remanded the case for a new trial. *U. S. Philips Corp.* v. *Windmere Corp.*, 861 F. 2d 695 (CA Fed. 1988), cert. denied, 490 U. S. 1068 (1989). Izumi took no further part in the litigation.

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[*] Briefs of *amici curiae* urging reversal were filed for Sears Roebuck & Co. by *Roger D. Greer* and *Kara F. Cenar;* and for Trial Lawyers for Public Justice by *Jill E. Fisch* and *Arthur H. Bryant.*

Jay M. Smyser filed a brief for the Product Liability Advisory Council, Inc., as *amicus curiae* urging affirmance.

A second jury found in favor of Windmere both on Philips' unfair competition claim and on Windmere's antitrust counterclaim, and judgment was entered in favor of Windmere on the latter for more than $89 million. Philips appealed both judgments to the Federal Circuit. Before the Court of Appeals decided the case, however, Windmere and Philips reached a settlement wherein Philips agreed to pay Windmere $57 million. Windmere and Philips also agreed jointly to request the Court of Appeals to vacate the District Court's judgments, although the settlement was not conditioned on the Federal Circuit granting the vacatur motion. After Windmere and Philips filed their joint motion to vacate, petitioner sought to intervene on appeal for purposes of opposing vacatur.

The Court of Appeals denied Izumi's motion to intervene. *U. S. Philips Corp.* v. *Windmere Corp.*, 971 F. 2d 728, 730–731 (CA Fed. 1992). It reasoned that Izumi was not a party to the second trial, and that its financial support of Windmere's litigation as an indemnitor was not sufficient to confer party status. The Court of Appeals also concluded that Izumi's interest in preserving the judgment for collateral estoppel purposes was insufficient to provide standing.[1] *Ibid.* The Court of Appeals proceeded to review the vacatur motion and concluded that, because the settlement included all the parties to the appeal, vacatur was appropriate. *Id.*, at 731.

Title 28 U. S. C. § 1254(1) provides, in relevant part:

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[1] Petitioner hoped to preserve the judgment for use in a suit brought by Philips against Sears and Izumi in the United States District Court for the Northern District of Illinois. As with Windmere, Izumi has agreed to indemnify Sears' litigation expenses.

> "Cases in the courts of appeals may be reviewed by the Supreme Court . . .
>
> "(1) [B]y writ of certiorari granted upon the petition of any *party* to any civil or criminal case, before or after rendition of judgment or decree." (Emphasis added.)

Because the Court of Appeals denied petitioner's motion for intervention, Izumi is not a party to this particular civil case. One who has been denied the right to intervene in a case in a court of appeals may petition for certiorari to review that ruling, *Automobile Workers* v. *Scofield*, 382 U. S. 205, 208–209 (1965), but Izumi presented no such question in its petition for certiorari. It presented a single question for our review: "Should the United States Courts of Appeals routinely vacate district court final judgments at the parties' request when cases are settled while on appeal?" Because this question has divided the Courts of Appeals,[2] we granted certiorari. 507 U. S. 907 (1993). In its brief on the merits, petitioner added the following to its list of questions presented: "Whether the court of appeals should have permitted Petitioner to oppose Respondents' motion to vacate the district court judgment."

This Court's Rule 14.1(a) provides, in relevant part: "The statement of any question presented [in a petition for certiorari] will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition, or fairly included therein, will be considered by the

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[2] Like the Federal Circuit, the Second Circuit will generally grant motions to vacate when parties settle on appeal. See *Nestle Co.* v. *Chester's Market, Inc.*, 756 F. 2d 280, 282–284 (CA2 1985). The Third, District of Columbia, and Seventh Circuits will generally deny such motions. See *Clarendon Ltd.* v. *Nu-West Industries, Inc.*, 936 F. 2d 127 (CA3 1991); *In re United States*, 927 F. 2d 626 (CADC 1991); *In re Memorial Hospital of Iowa County, Inc.*, 862 F. 2d 1299 (CA7 1988). The Ninth Circuit requires district courts to balance "the competing values of finality of judgment and right to relitigation of unreviewed disputes." *Ringsby Truck Lines, Inc.* v. *Western Conference of Teamsters*, 686 F. 2d 720, 722 (1982).

Court."[3] Unless we can conclude that the question of the denial of petitioner's motion to intervene in the Court of Appeals was "fairly included" in the question relating to the vacatur of final judgments at the parties' request, Rule 14.1 would prevent us from reaching it.

It seems clear that a challenge to the Federal Circuit's denial of petitioner's motion to intervene is not "subsidiary" to the question on which we granted certiorari. On the contrary, it is akin to a question regarding a party's standing,[4] which we have described as a "threshold inquiry" that " 'in no way depends on the merits' " of the case. *Whitmore* v. *Arkansas,* 495 U. S. 149, 155 (1990) (quoting *Warth* v. *Seldin,* 422 U. S. 490, 500 (1975)).

We also believe that the question is not "fairly included" in the question presented for our review.[5] A question which is merely "complementary" or "related" to the question presented in the petition for certiorari is not " 'fairly included therein.'" *Yee* v. *Escondido,* 503 U. S. 519, 537 (1992). Thus, in *Yee,* we concluded that the question whether an ordinance effected a physical taking did not include the related question of whether it effected a regulatory taking. *Ibid.* Whether petitioner should have been granted leave to intervene below is quite distinct, both analytically and factually, from the question whether the Court of Appeals should vacate judgments where the parties have so stipulated. The questions are even less related or complementary to one another than were the questions in *Yee.*

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[3] The initial version of this Rule, promulgated in 1954, stated: "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court." Rule 23.1(c), Rules of the Supreme Court of the United States, 346 U. S. 951, 972 (1954). The current version dates back to 1980, when we amended the Rules. The 1980 changes in syntax obviously did not alter the substance of the Rule.

[4] The Court of Appeals actually dismissed Izumi's motion in terms of standing, concluding that Izumi did "not have standing to oppose the joint motion." *U. S. Philips Corp.* v. *Windmere Corp.,* 971 F. 2d 728, 731 (CA Fed. 1992).

[5] We note that the fact that the parties devoted a portion of their merits briefs to the intervention issue does not bring that question properly before us. *Radzanower* v. *Touche Ross & Co.,* 426 U. S. 148, 151, n. 3 (1976). Nor does "[t]he fact that the issue was mentioned in argument . . . bring the question properly before us." *Mazer* v. *Stein,* 347 U. S. 201, 206, n. 5 (1954). Contrary to the dissent's suggestion, see *post,* at 35–36, the fact that Izumi discussed this issue in the text of its petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review.

The intervention question being neither presented as a question in the petition for certiorari nor fairly included therein, "Rule 14.1(a) accordingly creates a heavy presumption against our consideration" of that issue. *Ibid.* Rule 14.1(a), of course, is prudential; it "does not limit our power to decide important questions not raised by the parties." *Blonder-Tongue Laboratories, Inc.* v. *University of Ill. Foundation,* 402 U. S. 313, 320, n. 6 (1971). A prudential rule, however, is more than a precatory admonition. As we have stated on numerous occasions, we will disregard Rule 14.1(a) and consider issues not raised in the petition "'only in the most exceptional cases.'" *Yee, supra,* at 535 (quoting *Stone* v. *Powell,* 428 U. S. 465, 481, n. 15 (1976)); see also *Berkemer* v. *McCarty,* 468 U. S. 420, 443, n. 38 (1984) ("Absent unusual circumstances, . . . we are chary of considering issues not presented in petitions for certiorari").[6]

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[6] Even before the first version of the current Rule 14.1(a) was adopted, we indicated our unwillingness to decide issues not presented in petitions for certiorari. As we stated in *General Talking Pictures Corp.* v. *Western Electric Co.,* 304 U. S. 175, 179 (1938): "One having obtained a writ of certiorari to review specified questions is not entitled here to obtain decision on any other issue." And as Justice Jackson stated, writing for a plurality in *Irvine* v. *California,* 347 U. S. 128, 129–130 (1954): "We disapprove the practice of smuggling additional questions into a case after we grant certiorari. The issues here are fixed by the petition unless we limit the grant, as frequently we do to avoid settled, frivolous or state law questions."

We have made exceptions to Rule 14.1(a) in cases where we have overruled one of our prior decisions even though neither party requested it. See, *e. g., Blonder-Tongue, supra,* at 319–321. We have also decided a case on nonconstitutional grounds even though the petition for certiorari presented only a constitutional question. See, *e. g., Boynton* v. *Virginia,* 364 U. S. 454, 457 (1960); *Neese* v. *Southern R. Co.,* 350 U. S. 77, 78 (1955). We must also notice the possible absence of jurisdiction because we are obligated to do so even when the issue is not raised by a party. See, *e. g., Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency,* 440 U. S. 391, 398 (1979); *Liberty Mut. Ins. Co.* v. *Wetzel,* 424 U. S. 737, 740 (1976). And we may, pursuant to this Court's Rule 24.1(a), "consider a plain error not among the questions presented but evident from the record and otherwise within [our] jurisdiction to decide." See, *e. g., Wood* v. *Georgia,* 450 U. S. 261, 265, n. 5 (1981); see generally R. Stern, E. Gressman, & S. Shapiro, Supreme Court Practice §6.26 (6th ed. 1986) (discussing Rule 14.1(a) and its exceptions).

The present case bears scant resemblance to those cited above in which we have made exceptions to the provisions of Rule 14.1. While the decision on any particular motion to intervene may be a difficult one, it is always to some extent bound up in the facts of the particular case. Should we undertake to review the Court of Appeals' decision on intervention, it is unlikely that any new principle of law would be enunciated, as is evident from the briefs of the parties on this question. As we said in *Yee,* Rule 14.1(a) helps us "[t]o use our resources most efficiently" by highlighting those cases "that will enable us to resolve particularly important questions." 503 U. S., at 536. The Court of Appeals' disposition of petitioner's motion to intervene is simply not such a question.[7]

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[7] JUSTICE STEVENS in dissent urges that our disposition of *United States* v. *Williams,* 504 U. S. 36 (1992), provides authority for reaching the merits of this case. We disagree. There we applied a different prudential

Should we disregard the Rule here, there would also be a natural tendency—to be consciously resisted, of course—to reverse the holding of the Court of Appeals on the intervention question in order that we could address the merits of the question on which we actually granted certiorari; otherwise, we would have devoted our efforts *solely* to addressing a relatively factbound issue which does not meet the standards that guide the exercise of our certiorari jurisdiction. Our faithful application of Rule 14.1(a) thus helps ensure that we are not tempted to engage in ill-considered decisions of questions not presented in the petition. Faithful application will also inform those who seek review here that we continue to strongly "disapprove the practice of smuggling additional questions into a case after we grant certiorari." *Irvine* v. *California*, 347 U. S. 128, 129 (1954) (plurality opinion).

Izumi was not a party to the appeal below, and the Court of Appeals denied its motion to intervene there. Because we decline to review the propriety of the Court of Appeals' denial of intervention, petitioner lacks standing under § 1254(1) to seek review of the question presented in the petition for certiorari. The writ of certiorari is therefore dismissed as improvidently granted.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

When both parties to a case pending on appeal ask the appellate court to vacate the judgment entered by the trial court because they have settled their differences, should the court routinely take that action without first considering its effect on third parties? Subsumed within that question is the related question whether an affected third party should

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rule—the one which precludes our review of an issue that "was not pressed or passed upon below." *Id.*, at 41 (internal quotation marks omitted). Because the issue there *had been passed upon* by the lower court, see *id.*, at 39, we reviewed it.

be allowed to intervene to object to the vacation of the judgment. In this case the Court of Appeals for the Federal Circuit answered both of those questions incorrectly.

Petitioner Izumi manufactures electric razors in Japan that it sells to American distributors, including Windmere and Sears Roebuck. It has indemnified those distributors against liability for patent or trade dress infringement. Respondent Philips is a competitor that has been engaged in protracted litigation with Izumi's distributors. In a case filed by respondent in the Southern District of Florida, the trial court entered a judgment dismissing respondent's trade dress claims and awarding Windmere $89,644,257 plus attorney's fees, interest, and costs on an antitrust counterclaim. In a second case filed by respondent in the Northern District of Illinois, the District Court held that the Florida judgment collaterally estopped respondent from pursuing certain claims against Sears. Thereafter, respondent and Windmere settled their differences on terms that included a payment to Windmere of $57 million and Windmere's agreement to join in a motion to vacate the Florida judgment.

Izumi was not a party to the settlement. Promptly after the settling parties filed their motion in the Federal Circuit, Izumi tried to object to the vacation of the Florida judgment. The court denied the motion on the ground that Izumi lacked standing, because it was not a party and its interest was insufficient to support intervention. The court then granted the motion to vacate. When that action was brought to the attention of the District Court in Illinois, it reinstated claims against Izumi's indemnitee (Sears).

Izumi filed a petition for certiorari presenting a single question.[1] The petition itself devoted an entire section to refuting the Federal Circuit's argument that Izumi's interest was too insignificant to justify intervention.[2] In its brief in opposition, respondent argued that the intervention issue was not properly raised.[3] After consideration of respondent's arguments, we nevertheless decided to grant certiorari. We might, of course, have expressly directed the parties to argue the two questions separately, but it is now apparent that such direction was unnecessary because their briefs on the merits canvassed both issues.

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[1] "Should the United States Court of Appeals routinely vacate district court final judgments at the parties' request when cases are settled while on appeal?" Pet. for Cert. i.

The question whether Izumi should have been allowed to intervene in the Court of Appeals is a "subsidiary question fairly included" in the question presented, Rule 14.1(a), because the answer to the intervention question depends on the validity of the practice of routinely granting settling parties' motions to vacate trial court judgments. For if that routine practice is proper, then there is no point in allowing intervention. On the other hand, if vacation should ever be denied because of the potential impact on third-party interests, it was error to deny intervention in this case.[4] If routine vacation is improper, the Court of Appeals' reasons for denying intervention were clearly insufficient. Izumi obviously had a stake in the outcome of the motion, because the vacation of the Florida judgment significantly increased the potential liability and litigation expenses of its indemnitee. The fact that Izumi was not a formal party to the case before it sought to intervene is irrelevant because the very purpose of intervention is to acquire the status of a party.

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[2] The substantive portion of Izumi's petition for certiorari was divided into four lettered sections. In the fourth, section D, petitioner argued that the prospect of relitigation in Illinois and Izumi's interest in the judgment against Windmere gave it "an immediate and direct interest in challenging the propriety of granting vacatur following settlement," and therefore that "Izumi was entitled to intervene in the appeal for the purposes of opposing vacatur." Pet. for Cert. 14, 15.

[3] Brief in Opposition 2, 4–5.

[4] See *National Union Fire Ins. Co. of Pittsburgh* v. *Seafirst Corp.*, 891 F. 2d 762, 764 (CA9 1989) (intervention granted to allow nonparty to challenge vacation of judgment).

Even if I were to concede that the intervention question is not "fairly included" in the question presented, I would still think it inappropriate to dismiss the writ of certiorari as improvidently granted. In view of the fact that petitioner raised and discussed the issue in its petition for certiorari, the Court's decision today rests purely on the technicality that the petition failed to frame a separate question to introduce this argument. Given the Court's occasional practice of ordering parties to address questions they have not raised,[5] it is ironic that the omission in this case should be given critical weight. Indeed, the Court's decision punishes this technical error much more severely than it has ever punished similar violations. Until today, the Court had never dismissed a case because of a violation of Rule 14.1(a) or its predecessors.[6]

To justify its decision, the majority quotes *Yee* v. *Escondido*, 503 U. S. 519 (1992), for the proposition that Rule 14.1(a), although prudential, is disregarded "'"only in the most exceptional cases,"'"[7] *ante*, at 32. But the majority omits the very next words, which explain that it is proper to set aside the rule "where reasons of urgency *or of economy* suggest the need to address the unpresented question." 503 U. S., at 535 (1992) (emphasis added). Judicial economy is not served by invoking prudential rules "*after* we have granted certiorari and the case has received plenary consideration on the merits. Our decision to grant certiorari represents a commitment of scarce judicial resources with a view to deciding the merits of one or more of the questions presented in the petition." *Oklahoma City* v. *Tuttle,* 471 U. S. 808, 815–816 (1985) (emphasis in original). See also *Canton* v. *Harris,* 489 U. S. 378, 384 (1989). The Court recently used stronger language when it refused to dismiss a case on prudential grounds raised and rejected in the process of granting certiorari. The majority noted that the dissent

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[5] *Christianson* v. *Colt Industries Operating Corp.*, 484 U. S. 985 (1987) (directing parties to brief and argue jurisdictional question); *Eisen* v. *Carlisle & Jacquelin*, 414 U. S. 908 (1973) (same); *Payne* v. *Tennessee*, 498 U. S. 1076 (1991); *Patterson* v. *McLean Credit Union*, 485 U. S. 617 (1988).

[6] Rule 14.1(a) itself dates only to 1990, but the 1990 revisions merely renumbered a rule which has not substantially changed since 1954. Rule 21.1(a) (1980) (identical language to present rule); Rule 23.1(c) (1954) ("Only the questions set forth in the petition or fairly comprised therein will be considered by the court"). The Court never dismissed certiorari under either of these earlier rules. Even under the harsher rule that governed between 1939 and 1954, which allowed consideration only of "questions specifically brought forward by the petition," the Court never sanctioned violations with dismissal of certiorari as improvidently granted. Rule 38.2 (1939).

[7] The Court also notes that jurisdictional questions are a traditional exception to the rule that an issue must fall under a question presented, *ante*, at 33, but the Court fails to recognize that the issue here—the propriety of intervention—is jurisdictional and thus falls within that exception.

> "proposes that—after briefing, argument, and full consideration of the issue by all the Justices of this Court—we now decline to entertain this petition for the same reason we originally rejected it, and that we dismiss it as improvidently granted. That would be improvident indeed. Our grant of certiorari was entirely in accord with our traditional practice, though even if it were not it would be imprudent (since there is no doubt that we have jurisdiction to entertain the case) to reverse course at this late stage." *United States* v. *Williams,* 504 U. S. 36, 40 (1992).[8]

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[8] The majority notes that *Williams* concerned a different prudential rule—the one which precludes review of an issue that "'was not pressed or passed upon below'"—but fails to provide any reason why violation of that rule should be forgiven more easily than violation of Rule 14.1(a). *Ante,* at 34, n. 7. If anything, one might think that the Court should be more reluctant to waive the rule requiring presentation of the issue below, because it ensures the adequate development of the record and protects the Court from deciding questions that could have been resolved by the lower courts. In addition, although the majority claims that the rule was satisfied "because the issue there *had been passed upon* by the lower court," it fails to note that part of the reason the rule was deemed to be satisfied was that the party had raised and the Court of Appeals had de-

Our opinion in *Yee* explains why Rule 14.1(a) ordinarily bars consideration of unpresented questions. First, the rule provides notice and prevents surprise, thus ensuring full briefing; second, the rule allows the Court to select only cases which present important questions and to focus its attention on those questions. *Yee,* 503 U. S., at 535–536. Neither reason applies here. There was no surprise, because the intervention issue was raised in the petition for certiorari and in petitioner's opening brief, and respondent argued the propriety of denying intervention at every opportunity. Nor did failure to use the word "intervention" in the "Question Presented" section of the petition for certiorari interfere with the efficient selection of cases for plenary review, since the Court was fully aware that the issue needed to be resolved in order to reach the vacation issue. It is not surprising that *Yee*'s explanation of Rule 14.1(a) does not fit the circumstances of this case, because Rule 14.1(a) was never intended to provide the basis for dismissal, and, before today, was never used for that purpose.[9]

The Court today suggests an additional argument for strict enforcement of Rule 14.1(a), that "there would also be a natural tendency—to be consciously resisted, of course—to reverse the holding of the Court of Appeals on the intervention question in order that we could address the merits of the question on which we actually granted certiorari." *Ante,* at 34. Reliance on such a flimsy argument underestimates the character and the quality of the Court's decisional processes. Moreover, this argument overlooks the fact that the Court

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cided the issue in *another* case. 504 U. S., at 43–45. In this case, a comparable response to the prudential rule precluding review of the issue not expressly mentioned in the "question presented" would simply note that the intervention issue was discussed in *another* section of the certiorari petition. Most importantly, the majority misses the point of the passage quoted from *Williams.* The majority in that case noted that "even if" the prudential rule were violated, "it would be imprudent . . . to reverse course at this late stage." *Id.,* at 40.

[9] See n. 6, *supra.*

was aware of that temptation at the time certiorari was granted. Nothing has changed since then to suggest dismissal is now more appropriate.

On the merits, I am persuaded that the Federal Circuit's routine practice is as objectionable as the practice we recently condemned in *Cardinal Chemical Co.* v. *Morton International, Inc.*, 508 U. S. 83 (1993).[10] While it is appropriate to vacate a judgment when mootness deprives the appellant of an opportunity for review, *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950), that justification does not apply to mootness achieved by purchase. Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur.

Respondent argues that a policy of routinely vacating judgments whenever both parties so request will encourage settlement. It will, of course, affect the *terms* of some settlements negotiated while cases are pending on appeal, but there is no evidence that the *number* of settlements will be appreciably increased by such a policy. Indeed, the experience in California demonstrates that the contrary may well be true.[11] Moreover, the facts of this case indicate that any benefit in the form of saving work for the appellate court will probably be offset by the added burdens imposed on trial courts in later proceedings. On the other hand, it seems evident that a regular practice of denying these motions unless supported by a showing of special circumstances will create added pressure to settle in advance of trial. The public interest in preserving the work product of the judicial system should always at least be weighed in the balance before such a motion is granted. I would therefore reverse the judgment of the Court of Appeals.

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[10] In *Cardinal Chemical* we held the Federal Circuit should discontinue its practice of routinely vacating as moot declaratory judgments of patent validity upon affirmance of a finding that the patent had not been infringed.

[11] Barnett, Making Decisions Disappear: Depublication and Stipulated Reversal in the California Supreme Court, 26 Loyola (LA) L. Rev. 1033, 1073 (1993). In the years before the California Supreme Court endorsed routine vacation of judgments on settlement, there was a natural experiment in the California courts of appeals. While most courts routinely granted vacation, Division One of the Fourth Appellate District never did. Comparison of the rates of settlement in that court and the rest of the California appellate courts suggests that the denial of vacation did not discourage settlement. In fact, the rate of settlement in Division One of the Fourth Appellate District was twice as high as that in other appellate courts.

CAVANAUGH, EXECUTIVE DIRECTOR, SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, ET AL. *v.* ROLLER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 92–1510. Argued November 8, 1993—Decided November 30, 1993

Certiorari dismissed. Reported below: 984 F. 2d 120.

Carl N. Lundberg argued the cause for petitioners. With him on the briefs were *T. Travis Medlock,* Attorney General of South Carolina, and *Edwin W. Evans,* Chief Deputy Attorney General.

W. Gaston Fairey, by appointment of the Court, 509 U. S. 920, argued the cause and filed a brief for respondent.

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

UNITED STATES *v.* JAMES DANIEL GOOD REAL PROPERTY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–1180. Argued October 6, 1993—Decided December 13, 1993

Four and one-half years after police found drugs and drug paraphernalia in claimant Good's home and he pleaded guilty to promoting a harmful drug in violation of Hawaii law, the United States filed an *in rem* action in the Federal District Court, seeking forfeiture of his house and land, under 21 U. S. C. § 881(a)(7), on the ground that the property had been used to commit or facilitate the commission of a federal drug offense. Following an *ex parte* proceeding, a Magistrate Judge issued a warrant authorizing the property's seizure, and the Government seized the property without prior notice to Good or an adversary proceeding. In his claim for the property and answer to the Government's complaint, Good asserted that he was deprived of his property without due process of law and that the action was invalid because it had not been timely commenced. The District Court ordered that the property be forfeited, but the Court of Appeals reversed. It held that the seizure without prior notice and a hearing violated the Due Process Clause, and remanded the case for a determination whether the action, although filed within the 5-year period provided by 19 U. S. C. § 1621, was untimely because the Government failed to follow the internal notification and reporting requirements of §§ 1602–1604.

Held:

1. Absent exigent circumstances, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture. Pp. 48–62.

(a) The seizure of Good's property implicates two " 'explicit textual source[s] of constitutional protection,' " the Fourth Amendment and the Fifth. *Soldal* v. *Cook County*, 506 U. S. 56, 70. While the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. *Gerstein* v. *Pugh*, 420 U. S. 103; *Graham* v. *Connor*, 490 U. S. 386, distinguished. Where the Government seizes property not to preserve evidence of criminal wrongdoing but to assert ownership and control over the property, its action must also comply with the Due

Process Clause. See, *e. g., Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U. S. 663; *Fuentes* v. *Shevin,* 407 U. S. 67. Pp. 48–52.

(b) An exception to the general rule requiring predeprivation notice and hearing is justified only in extraordinary situations. *Id.,* at 82. Using the three-part inquiry set forth in *Mathews* v. *Eldridge,* 424 U. S. 319—consideration of the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden that additional procedural requirements would impose, *id.,* at 335—the seizure of real property for purposes of civil forfeiture does not justify such an exception. Good's right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance, cf., *e. g., United States* v. *Karo,* 468 U. S. 705, 714–715, that weighs heavily in the *Mathews* balance. Moreover, the practice of *ex parte* seizure creates an unacceptable risk of error, since the proceeding affords little or no protection to an innocent owner, who may not be deprived of property under § 881(a)(7). Nor does the governmental interest at stake here present a pressing need for prompt action. Because real property cannot abscond, a court's jurisdiction can be preserved without prior seizure simply by posting notice on the property and leaving a copy of the process with the occupant. In addition, the Government's legitimate interests at the inception of a forfeiture proceeding—preventing the property from being sold, destroyed, or used for further illegal activity before the forfeiture judgment—can be secured through measures less intrusive than seizure: a *lis pendens* notice to prevent the property's sale, a restraining order to prevent its destruction, and search and arrest warrants to forestall further illegal activity. Since a claimant is already entitled to a hearing before final judgment, requiring the Government to postpone seizure until after an adversary hearing creates no significant administrative burden, and any harm from the delay is minimal compared to the injury occasioned by erroneous seizure. Pp. 52–59.

(c) No plausible claim of executive urgency, including the Government's reliance on forfeitures as a means of defraying law enforcement expenses, justifies the summary seizure of real property under § 881(a)(7). Cf. *Phillips* v. *Commissioner,* 283 U. S. 589. Pp. 59–61.

2. Courts may not dismiss a forfeiture action filed within the 5-year statute of limitations for noncompliance with the timing requirements of §§ 1602–1604. Congress' failure to specify a consequence for noncompliance implies that it intended the responsible officials administering the Act to have discretion to determine what disciplinary measures are appropriate when their subordinates fail to discharge their statutory

duties, and the federal courts should not in the ordinary course impose their own coercive sanction, see, *e. g., United States* v. *Montalvo-Murillo,* 495 U. S. 711, 717–721. Pp. 62–65.

971 F. 2d 1376, affirmed in part, reversed in part, and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court with respect to Parts I and III, and the opinion of the Court with respect to Parts II and IV, in which BLACKMUN, STEVENS, SOUTER, and GINSBURG, JJ., joined. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which SCALIA, J., joined, and in which O'CONNOR, J., joined as to Parts II and III, *post,* p. 65. O'CONNOR, J., *post,* p. 73, and THOMAS, J., *post,* p. 80, filed opinions concurring in part and dissenting in part.

Edwin S. Kneedler argued the cause for the United States. With him on the brief were *Solicitor General Days, Acting Solicitor General Bryson,* and *Acting Assistant Attorney General Keeney.*

Christopher J. Yuen argued the cause and filed a brief for respondents.*

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*A brief of *amici curiae* urging reversal was filed for the State of Kentucky et al. by *Chris Gorman,* Attorney General, and *David A. Sexton,* Assistant Attorney General, *Malaetasi Togafau,* Attorney General of American Samoa, *Grant Woods,* Attorney General of Arizona, *Daniel E. Lungren,* Attorney General of California, *Domenick J. Galluzzo,* Acting Chief State's Attorney of Connecticut, *Pamela Carter,* Attorney General of Indiana, *Robert T. Stephan,* Attorney General of Kansas, *Richard P. Ieyoub,* Attorney General of Louisiana, *J. Joseph Curran, Jr.,* Attorney General of Maryland, *Scott Harshbarger,* Attorney General of Massachusetts, *Frank J. Kelley,* Attorney General of Michigan, *Mike Moore,* Attorney General of Mississippi, *Joseph P. Mazurek,* Attorney General of Montana, *Don Stenberg,* Attorney General of Nebraska, *Jeffrey R. Howard,* Attorney General of New Hampshire, *Tom Udall,* Attorney General of New Mexico, *Heidi Heitkamp,* Attorney General of North Dakota, *Ernest D. Preate, Jr.,* Attorney General of Pennsylvania, and *Joseph B. Myer,* Attorney General of Wyoming.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Steven Alan Reiss, Richard A. Rothman, Katherine Oberlies, Steven R. Shapiro,* and *John A. Powell;* for the Institute for Justice by *William H. Mellor III* and *Clint Bolick;* and for the National Association of Criminal Defense Lawyers by *Richard J. Troberman* and *E. E. Edwards III.*

JUSTICE KENNEDY delivered the opinion of the Court.

The principal question presented is whether, in the absence of exigent circumstances, the Due Process Clause of the Fifth Amendment prohibits the Government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard. We hold that it does.

A second issue in the case concerns the timeliness of the forfeiture action. We hold that filing suit for forfeiture within the statute of limitations suffices to make the action timely, and that the cause should not be dismissed for failure to comply with certain other statutory directives for expeditious prosecution in forfeiture cases.

I

On January 31, 1985, Hawaii police officers executed a search warrant at the home of claimant James Daniel Good. The search uncovered about 89 pounds of marijuana, marijuana seeds, vials containing hashish oil, and drug paraphernalia. About six months later, Good pleaded guilty to promoting a harmful drug in the second degree, in violation of Hawaii law. Haw. Rev. Stat. § 712–1245(1)(b) (1985). He was sentenced to one year in jail and five years' probation, and fined $1,000. Good was also required to forfeit to the State $3,187 in cash found on the premises.

On August 8, 1989, 4½ years after the drugs were found, the United States filed an *in rem* action in the United States District Court for the District of Hawaii, seeking to forfeit Good's house and the 4-acre parcel on which it was situated. The United States sought forfeiture under 21 U. S. C. § 881(a)(7), on the ground that the property had been used to commit or facilitate the commission of a federal drug offense.[1]

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[1] Title 21 U. S. C. § 881(a)(7) provides:

"(a) . . .

"The following shall be subject to forfeiture to the United States and no property right shall exist in them:

On August 18, 1989, in an *ex parte* proceeding, a United States Magistrate Judge found that the Government had established probable cause to believe Good's property was subject to forfeiture under § 881(a)(7). A warrant of arrest *in rem* was issued, authorizing seizure of the property. The warrant was based on an affidavit recounting the fact of Good's conviction and the evidence discovered during the January 1985 search of his home by Hawaii police.

The Government seized the property on August 21, 1989, without prior notice to Good or an adversary hearing. At the time of the seizure, Good was renting his home to tenants for $900 per month. The Government permitted the tenants to remain on the premises subject to an occupancy agreement, but directed the payment of future rents to the United States Marshal.

Good filed a claim for the property and an answer to the Government's complaint. He asserted that the seizure deprived him of his property without due process of law and that the forfeiture action was invalid because it had not been timely commenced under the statute. The District Court granted the Government's motion for summary judgment and entered an order forfeiting the property.

The Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded for further proceedings. 971 F. 2d 1376 (1992). The court was unanimous in holding that the seizure of Good's property, without prior notice and a hearing, violated the Due Process Clause.

. . . . .

"(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

In a divided decision, the Court of Appeals further held that the District Court erred in finding the action timely. The Court of Appeals ruled that the 5-year statute of limitations in 19 U. S. C. § 1621 is only an "outer limit" for filing a forfeiture action, and that further limits are imposed by 19 U. S. C. §§ 1602–1604. 971 F. 2d, at 1378–1382. Those provisions, the court reasoned, impose a "series of internal notification and reporting requirements," under which "customs agents must report to customs officers, customs officers must report to the United States attorney, and the Attorney General must 'immediately' and 'forthwith' bring a forfeiture action if he believes that one is warranted." *Id.*, at 1379 (citations omitted). The Court of Appeals ruled that failure to comply with these internal reporting rules could require dismissal of the forfeiture action as untimely. The court remanded the case for a determination whether the Government had satisfied its obligation to make prompt reports. *Id.*, at 1382.

We granted certiorari, 507 U. S. 983 (1993), to resolve a conflict among the Courts of Appeals on the constitutional question presented. Compare *United States* v. *Premises and Real Property at 4492 South Livonia Road*, 889 F. 2d 1258 (CA2 1989), with *United States* v. *A Single Family Residence and Real Property*, 803 F. 2d 625 (CA11 1986). We now affirm the due process ruling and reverse the ruling on the timeliness question.

II

The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property. See *United States* v. *$8,850*, 461 U. S. 555, 562, n. 12 (1983); *Fuentes* v. *Shevin*, 407 U. S. 67, 82 (1972); *Sniadach* v. *Family Finance Corp. of Bay View*, 395 U. S. 337, 342 (1969) (Harlan, J., concurring); *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950).

The Government does not, and could not, dispute that the seizure of Good's home and 4-acre parcel deprived him of property interests protected by the Due Process Clause. By the Government's own submission, the seizure gave it the right to charge rent, to condition occupancy, and even to evict the occupants. Instead, the Government argues that it afforded Good all the process the Constitution requires. The Government makes two separate points in this regard. First, it contends that compliance with the Fourth Amendment suffices when the Government seizes property for purposes of forfeiture. In the alternative, it argues that the seizure of real property under the drug forfeiture laws justifies an exception to the usual due process requirement of preseizure notice and hearing. We turn to these issues.

A

The Government argues that because civil forfeiture serves a "law enforcement purpos[e]," Brief for United States 13, the Government need comply only with the Fourth Amendment when seizing forfeitable property. We disagree. The Fourth Amendment does place restrictions on seizures conducted for purposes of civil forfeiture, *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693, 696 (1965) (holding that the exclusionary rule applies to civil forfeiture), but it does not follow that the Fourth Amendment is the sole constitutional provision in question when the Government seizes property subject to forfeiture.

We have rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another. As explained in *Soldal* v. *Cook County*, 506 U. S. 56, 70 (1992):

> "Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations

> are alleged, we are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, we examine each constitutional provision in turn."

Here, as in *Soldal,* the seizure of property implicates two "'explicit textual source[s] of constitutional protection,'" the Fourth Amendment and the Fifth. *Ibid.* The proper question is not which Amendment controls but whether either Amendment is violated.

Nevertheless, the Government asserts that when property is seized for forfeiture, the Fourth Amendment provides the full measure of process due under the Fifth. The Government relies on *Gerstein* v. *Pugh,* 420 U. S. 103 (1975), and *Graham* v. *Connor,* 490 U. S. 386 (1989), in support of this proposition. That reliance is misplaced. *Gerstein* and *Graham* concerned not the seizure of property but the arrest or detention of criminal suspects, subjects we have considered to be governed by the provisions of the Fourth Amendment without reference to other constitutional guarantees. In addition, also unlike the seizure presented by this case, the arrest or detention of a suspect occurs as part of the regular criminal process, where other safeguards ordinarily ensure compliance with due process.

Gerstein held that the Fourth Amendment, rather than the Due Process Clause, determines the requisite postarrest proceedings when individuals are detained on criminal charges. Exclusive reliance on the Fourth Amendment is appropriate in the arrest context, we explained, because the Amendment was "tailored explicitly for the criminal justice system," and its "balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases." 420 U. S., at 125, n. 27. Furthermore, we noted that the protections afforded during an arrest and initial detention are "only the *first* stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct." *Ibid.* (emphasis in original).

So too, in *Graham* we held that claims of excessive force in the course of an arrest or investigatory stop should be evaluated under the Fourth Amendment reasonableness standard, not under the "more generalized notion of 'substantive due process.'" 490 U. S., at 395. Because the degree of force used to effect a seizure is one determinant of its reasonableness, and because the Fourth Amendment guarantees citizens the right "to be secure in their persons . . . against unreasonable . . . seizures," we held that a claim of excessive force in the course of such a seizure is "most properly characterized as one invoking the protections of the Fourth Amendment." *Id.*, at 394.

Neither *Gerstein* nor *Graham*, however, provides support for the proposition that the Fourth Amendment is the beginning and end of the constitutional inquiry whenever a seizure occurs. That proposition is inconsistent with the approach we took in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), which examined the constitutionality of *ex parte* seizures of forfeitable property under general principles of due process, rather than the Fourth Amendment. And it is at odds with our reliance on the Due Process Clause to analyze prejudgment seizure and sequestration of personal property. See, *e. g., Fuentes* v. *Shevin*, 407 U. S. 67 (1972); *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974).

It is true, of course, that the Fourth Amendment applies to searches and seizures in the civil context and may serve to resolve the legality of these governmental actions without reference to other constitutional provisions. See *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523 (1967) (holding that a warrant based on probable cause is required for administrative search of residences for safety inspections); *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602 (1989) (holding that federal regulations authorizing railroads to conduct blood and urine tests of certain employees, without a warrant and without reasonable suspicion, do not violate the Fourth Amendment prohibition against unreasonable searches and seizures). But the purpose and effect of the Government's action in the present case go beyond the traditional meaning of search or seizure. Here the Government seized property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clauses of the Fifth and Fourteenth Amendments.

Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. So even assuming that the Fourth Amendment were satisfied in this case, it remains for us to determine whether the seizure complied with our well-settled jurisprudence under the Due Process Clause.

B

Whether *ex parte* seizures of forfeitable property satisfy the Due Process Clause is a question we last confronted in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, *supra,* which held that the Government could seize a yacht subject to civil forfeiture without affording prior notice or hearing. Central to our analysis in *Calero-Toledo* was the fact that a yacht was the "sort [of property] that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given." *Id.*, at 679. The ease with which an owner could frustrate the Government's interests in the forfeitable property created a "'special need for very prompt action'" that justified the postponement of notice and hearing until after the seizure. *Id.*, at 678 (quoting *Fuentes*, *supra*, at 91).

We had no occasion in *Calero-Toledo* to decide whether the same considerations apply to the forfeiture of real property, which, by its very nature, can be neither moved nor concealed. In fact, when *Calero-Toledo* was decided, both the Puerto Rican statute, P. R. Laws Ann., Tit. 24, § 2512 (Supp. 1973), and the federal forfeiture statute upon which it was modeled, 21 U. S. C. § 881 (1970 ed.), authorized the forfeiture of personal property only. It was not until 1984, 10 years later, that Congress amended § 881 to authorize the forfeiture of real property. See 21 U. S. C. § 881(a)(7); Pub. L. 98–473, § 306, 98 Stat. 2050.

The right to prior notice and a hearing is central to the Constitution's command of due process. "The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property . . . ." *Fuentes,* 407 U. S., at 80–81.

We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in " 'extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' " *Id.,* at 82 (quoting *Boddie* v. *Connecticut,* 401 U. S. 371, 379 (1971)); *United States* v. *$8,850,* 461 U. S., at 562, n. 12. Whether the seizure of real property for purposes of civil forfeiture justifies such an exception requires an examination of the competing interests at stake, along with the promptness and adequacy of later proceedings. The three-part inquiry set forth in *Mathews* v. *Eldridge,* 424 U. S. 319 (1976), provides guidance in this regard. The *Mathews* analysis requires us to consider the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden that additional procedural requirements would impose. *Id.,* at 335.

Good's right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance. Cf. *United States* v. *Karo,* 468 U. S. 705, 714–715 (1984); *Payton* v. *New York,* 445 U. S. 573, 590 (1980). The seizure deprived Good of valuable rights of ownership, including the right of sale, the right of occupancy, the right to unrestricted use and enjoyment, and the right to receive rents. All that the seizure left him, by the Government's own submission, was the right to bring a claim for the return of title at some unscheduled future hearing.

In *Fuentes,* we held that the loss of kitchen appliances and household furniture was significant enough to warrant a predeprivation hearing. 407 U. S., at 70–71. And in *Connecticut* v. *Doehr,* 501 U. S. 1 (1991), we held that a state statute authorizing prejudgment attachment of real estate without prior notice or hearing was unconstitutional, in the absence of extraordinary circumstances, even though the attachment did not interfere with the owner's use or possession and did not affect, as a general matter, rentals from existing leaseholds.

The seizure of a home produces a far greater deprivation than the loss of furniture, or even attachment. It gives the Government not only the right to prohibit sale, but also the right to evict occupants, to modify the property, to condition occupancy, to receive rents, and to supersede the owner in all rights pertaining to the use, possession, and enjoyment of the property.

The Government makes much of the fact that Good was renting his home to tenants, and contends that the tangible effect of the seizure was limited to taking the $900 a month he was due in rent. But even if this were the only deprivation at issue, it would not render the loss insignificant or unworthy of due process protection. The rent represents a significant portion of the exploitable economic value of Good's home. It cannot be classified as *de minimis* for purposes of procedural due process. In sum, the private interests at stake in the seizure of real property weigh heavily in the *Mathews* balance.

The practice of *ex parte* seizure, moreover, creates an unacceptable risk of error. Although Congress designed the drug forfeiture statute to be a powerful instrument in enforcement of the drug laws, it did not intend to deprive innocent owners of their property. The affirmative defense of innocent ownership is allowed by statute. See 21 U. S. C. § 881(a)(7) ("[N]o property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner").

The *ex parte* preseizure proceeding affords little or no protection to the innocent owner. In issuing a warrant of seizure, the magistrate judge need determine only that there is probable cause to believe that the real property was "used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of," a felony narcotics offense. *Ibid.* The Government is not required to offer any evidence on the question of innocent ownership or other potential defenses a claimant might have. See, *e. g., Austin* v. *United States,* 509 U. S. 602 (1993) (holding that forfeitures under 21 U. S. C. §§ 881(a)(4) and (a)(7) are subject to the limitations of the Excessive Fines Clause). Nor would that inquiry, in the *ex parte* stage, suffice to protect the innocent owner's interests. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U. S. 123, 170–172 (1951) (Frankfurter, J., concurring) (footnotes omitted).

The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decisionmaking. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding.[2] See *Harmelin* v. *Michigan*, 501 U. S. 957, 979, n. 9 (1991) (opinion of SCALIA, J.) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit"). Moreover, the availability of a postseizure hearing may be no recompense for losses caused by erroneous seizure. Given the congested civil dockets in federal courts, a claimant may not receive an adversary hearing until many months after the seizure. And even if the ultimate judicial decision is that the claimant was an innocent owner, or that the Government lacked probable cause, this determination, coming months after the seizure, "would not cure the temporary deprivation that an earlier hearing might have prevented." *Doehr*, 501 U. S., at 15.

This brings us to the third consideration under *Mathews*, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U. S., at 335. The governmental interest we consider here is not some general interest in forfeiting property but the specific interest in seizing real property before the forfeiture hearing. The question in the civil forfeiture context is whether *ex parte* seizure is justified by a pressing need for prompt action. See *Fuentes*, 407 U. S., at 91. We find no pressing need here.

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[2] The extent of the Government's financial stake in drug forfeiture is apparent from a 1990 memo, in which the Attorney General urged United States Attorneys to increase the volume of forfeitures in order to meet the Department of Justice's annual budget target:

"We must significantly increase production to reach our budget target.

". . . Failure to achieve the $470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget projections. Every effort must be made to increase forfeiture income during the remaining three months of [fiscal year] 1990." Executive Office for United States Attorneys, U. S. Dept. of Justice, 38 United States Attorney's Bulletin 180 (1990).

This is apparent by comparison to *Calero-Toledo*, where the Government's interest in immediate seizure of a yacht subject to civil forfeiture justified dispensing with the usual requirement of prior notice and hearing. Two essential considerations informed our ruling in that case: First, immediate seizure was necessary to establish the court's jurisdiction over the property, 416 U. S., at 679, and second, the yacht might have disappeared had the Government given advance warning of the forfeiture action, *ibid.* See also *United States* v. *Von Neumann*, 474 U. S. 242, 251 (1986) (no preseizure hearing is required when customs officials seize an automobile at the border). Neither of these factors is present when the target of forfeiture is real property.

Because real property cannot abscond, the court's jurisdiction can be preserved without prior seizure. It is true that seizure of the res has long been considered a prerequisite to the initiation of *in rem* forfeiture proceedings. See *Republic Nat. Bank of Miami* v. *United States*, 506 U. S. 80, 84 (1992); *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 363 (1984). This rule had its origins in the Court's early admiralty cases, which involved the forfeiture of vessels and other movable personal property. See *Taylor* v. *Carryl*, 20 How. 583, 599 (1858); *The Brig Ann*, 9 Cranch 289 (1815); *Keene* v. *United States*, 5 Cranch 304, 310 (1809). Justice Story, writing for the Court in *The Brig Ann*, explained the justification for the rule as one of fixing and preserving jurisdiction: "[B]efore judicial cognizance can attach upon a forfeiture *in rem*, . . . there must be a seizure; for until seizure it is impossible to ascertain what is the competent forum." 9 Cranch, at 291. But when the res is real property, rather than personal goods, the appropriate judicial forum may be determined without actual seizure.

As *The Brig Ann* held, all that is necessary "[i]n order to institute and perfect proceedings *in rem*, [is] that the thing should be actually or constructively within the reach of the Court." *Ibid.* And as we noted last Term, "[f]airly read, *The Brig Ann* simply restates the rule that the court must have actual or constructive control of the res when an *in rem* forfeiture suit is initiated." *Republic Nat. Bank, supra,* at 87. In the case of real property, the res may be brought within the reach of the court simply by posting notice on the property and leaving a copy of the process with the occupant. In fact, the rules which govern forfeiture proceedings under § 881 already permit process to be executed on real property without physical seizure:

> "If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person's agent." Rule E(4)(b), Supplemental Rules for Certain Admiralty and Maritime Claims.

See also *United States* v. *TWP 17 R 4, Certain Real Property in Maine,* 970 F. 2d 984, 986, and n. 4 (CA1 1992).

Nor is the *ex parte* seizure of real property necessary to accomplish the statutory purpose of § 881(a)(7). The Government's legitimate interests at the inception of forfeiture proceedings are to ensure that the property not be sold, destroyed, or used for further illegal activity prior to the forfeiture judgment. These legitimate interests can be secured without seizing the subject property.

Sale of the property can be prevented by filing a notice of *lis pendens* as authorized by state law when the forfeiture proceedings commence. 28 U. S. C. § 1964; and see Haw. Rev. Stat. § 634–51 (1985) (*lis pendens* provision). If there is evidence, in a particular case, that an owner is likely to destroy his property when advised of the pending action, the Government may obtain an *ex parte* restraining order, or other appropriate relief, upon a proper showing in district court. See Fed. Rule Civ. Proc. 65; *United States* v. *Prem-*

ises and Real Property at 4492 South Livonia Road, 889 F. 2d 1258, 1265 (CA2 1989). The Government's policy of leaving occupants in possession of real property under an occupancy agreement pending the final forfeiture ruling demonstrates that there is no serious concern about destruction in the ordinary case. See Brief for United States 13, n. 6 (citing Directive No. 90–10 (Oct. 9, 1990), Executive Office for Asset Forfeiture, Office of Deputy Attorney General). Finally, the Government can forestall further illegal activity with search and arrest warrants obtained in the ordinary course.

In the usual case, the Government thus has various means, short of seizure, to protect its legitimate interests in forfeitable real property. There is no reason to take the additional step of asserting control over the property without first affording notice and an adversary hearing.

Requiring the Government to postpone seizure until after an adversary hearing creates no significant administrative burden. A claimant is already entitled to an adversary hearing before a final judgment of forfeiture. No extra hearing would be required in the typical case, since the Government can wait until after the forfeiture judgment to seize the property. From an administrative standpoint it makes little difference whether that hearing is held before or after the seizure. And any harm that results from delay is minimal in comparison to the injury occasioned by erroneous seizure.

C

It is true that, in cases decided over a century ago, we permitted the *ex parte* seizure of real property when the Government was collecting debts or revenue. See, *e. g., Springer* v. *United States,* 102 U. S. 586, 593–594 (1881); *Murray's Lessee* v. *Hoboken Land & Improvement Co.,* 18 How. 272 (1856). Without revisiting these cases, it suffices to say that their apparent rationale—like that for allowing summary seizures during wartime, see *Stoehr* v. *Wallace,* 255

U. S. 239 (1921); *Bowles* v. *Willingham,* 321 U. S. 503 (1944), and seizures of contaminated food, see *North American Cold Storage Co.* v. *Chicago,* 211 U. S. 306 (1908)—was one of executive urgency. "The prompt payment of taxes," we noted, "may be vital to the existence of a government." *Springer, supra,* at 594. See also *G. M. Leasing Corp.* v. *United States,* 429 U. S. 338, 352, n. 18 (1977) ("The rationale underlying [the revenue] decisions, of course, is that the very existence of government depends upon the prompt collection of the revenues").

A like rationale justified the *ex parte* seizure of tax-delinquent distilleries in the late 19th century, see, *e. g., United States* v. *Stowell,* 133 U. S. 1 (1890); *Dobbins's Distillery* v. *United States,* 96 U. S. 395 (1878), since before passage of the Sixteenth Amendment, the Federal Government relied heavily on liquor, customs, and tobacco taxes to generate operating revenues. In 1902, for example, nearly 75 percent of total federal revenues—$479 million out of a total of $653 million—was raised from taxes on liquor, customs, and tobacco. See U. S. Bureau of Census, Historical Statistics of the United States, Colonial Times to the Present 1122 (1976).

The federal income tax code adopted in the first quarter of this century, however, afforded the taxpayer notice and an opportunity to be heard by the Board of Tax Appeals before the Government could seize property for nonpayment of taxes. See Revenue Act of 1921, 42 Stat. 265–266; Revenue Act of 1924, 43 Stat. 297. In *Phillips* v. *Commissioner,* 283 U. S. 589 (1931), the Court relied upon the availability, and adequacy, of these preseizure administrative procedures in holding that no judicial hearing was required prior to the seizure of property. *Id.,* at 597–599 (citing Act of Feb. 26, 1926, ch. 27, § 274(a), 44 Stat. 9, 55; Act of May 29, 1928, ch. 852, §§ 272(a), 601, 45 Stat. 791, 852, 872). These constraints on the Commissioner could be overridden, but only when the Commissioner made a determination that a jeopardy assessment was necessary. 283 U. S., at 598. Writing for a unanimous Court, Justice Brandeis explained that under the tax laws "[f]ormal notice of the tax liability is thus given; the Commissioner is required to answer; and there is a complete hearing *de novo* . . . . These provisions amply protect the [taxpayer] against improper administrative action." *Id.*, at 598–599; see also *Commissioner* v. *Shapiro*, 424 U. S. 614, 631 (1976) ("[In] the *Phillips* case . . . the taxpayer's assets could not have been taken or frozen . . . until he had either had, or waived his right to, a full and final adjudication of his tax liability before the Tax Court (then the Board of Tax Appeals)").

Similar provisions remain in force today. The current Internal Revenue Code prohibits the Government from levying upon a deficient taxpayer's property without first affording the taxpayer notice and an opportunity for a hearing, unless exigent circumstances indicate that delay will jeopardize the collection of taxes due. See 26 U. S. C. §§6212, 6213, 6851, 6861.

Just as the urgencies that justified summary seizure of property in the 19th century had dissipated by the time of *Phillips*, neither is there a plausible claim of urgency today to justify the summary seizure of real property under §881(a)(7). Although the Government relies to some extent on forfeitures as a means of defraying law enforcement expenses, it does not, and we think could not, justify the prehearing seizure of forfeitable real property as necessary for the protection of its revenues.

D

The constitutional limitations we enforce in this case apply to real property in general, not simply to residences. That said, the case before us well illustrates an essential principle: Individual freedom finds tangible expression in property rights. At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter within it.

Finally, the suggestion that this one claimant must lose because his conviction was known at the time of seizure, and because he raises an as applied challenge to the statute, founders on a bedrock proposition: Fair procedures are not confined to the innocent. The question before us is the legality of the seizure, not the strength of the Government's case.

In sum, based upon the importance of the private interests at risk and the absence of countervailing Government needs, we hold that the seizure of real property under § 881(a)(7) is not one of those extraordinary instances that justify the postponement of notice and hearing. Unless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture.[3]

To establish exigent circumstances, the Government must show that less restrictive measures—*i. e.*, a *lis pendens*, restraining order, or bond—would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property. We agree with the Court of Appeals that no showing of exigent circumstances has been made in this case, and we affirm its ruling that the *ex parte* seizure of Good's real property violated due process.

III

We turn now to the question whether a court must dismiss a forfeiture action that the Government filed within the statute of limitations, but without complying with certain other statutory timing directives.

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[3] We do not address what sort of procedures are required for preforfeiture seizures of real property in the context of criminal forfeiture. See, *e. g.*, 21 U. S. C. § 853; 18 U. S. C. § 1963 (1988 ed. and Supp. IV). We note, however, that the federal drug laws now permit seizure before entry of a criminal forfeiture judgment only where the Government persuades a district court that there is probable cause to believe that a protective order "may not be sufficient to assure the availability of the property for forfeiture." 21 U. S. C. § 853(f).

Title 21 U. S. C. § 881(d) incorporates the "provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws." The customs laws in turn set forth various timing requirements. Title 19 U. S. C. § 1621 contains the statute of limitations: "No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered." All agree that the Government filed its action within the statutory period.

The customs laws also contain a series of internal requirements relating to the timing of forfeitures. Title 19 U. S. C. § 1602 requires that a customs agent "report immediately" to a customs officer every seizure for violation of the customs laws, and every violation of the customs laws. Section 1603 requires that the customs officer "report promptly" such seizures or violations to the United States attorney. And § 1604 requires the Attorney General "forthwith to cause the proper proceedings to be commenced" if it appears probable that any fine, penalty, or forfeiture has been incurred. The Court of Appeals held, over a dissent, that failure to comply with these internal timing requirements mandates dismissal of the forfeiture action. We disagree.

We have long recognized that "many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them . . . do not limit their power or render its exercise in disregard of the requisitions ineffectual." *French* v. *Edwards*, 13 Wall. 506, 511 (1872). We have held that if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction. See *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 717–721 (1990); *Brock* v. *Pierce County*, 476 U. S. 253, 259–262 (1986); see also *St. Regis Mohawk Tribe* v. *Brock*, 769 F. 2d 37, 41 (CA2 1985) (Friendly, J.).

In *Montalvo-Murillo*, for example, we considered the Bail Reform Act of 1984, which requires an "immediat[e]" hearing upon a pretrial detainee's "first appearance before the judicial officer." 18 U. S. C. § 3142(f). Because "[n]either the timing requirements nor any other part of the Act [could] be read to require, or even suggest, that a timing error must result in release of a person who should otherwise be detained," we held that the federal courts could not release a person pending trial solely because the hearing had not been held "immediately." 495 U. S., at 716–717. We stated that "[t]here is no presumption or general rule that for every duty imposed upon the court or the Government and its prosecutors there must exist some corollary punitive sanction for departures or omissions, even if negligent." *Id.*, at 717 (citing *French, supra*, at 511). To the contrary, we stated that "[w]e do not agree that we should, or can, invent a remedy to satisfy some perceived need to coerce the courts and the Government into complying with the statutory time limits." 495 U. S., at 721.

Similarly, in *Brock, supra*, we considered a statute requiring that the Secretary of Labor begin an investigation within 120 days of receiving information about the misuse of federal funds. The respondent there argued that failure to act within the specified time period divested the Secretary of authority to investigate a claim after the time limit had passed. We rejected that contention, relying on the fact that the statute did not specify a consequence for a failure to comply with the timing provision. *Id.*, at 258–262.

Under our precedents, the failure of Congress to specify a consequence for noncompliance with the timing requirements of 19 U. S. C. §§ 1602–1604 implies that Congress intended the responsible officials administering the Act to have discretion to determine what disciplinary measures are appropriate when their subordinates fail to discharge their statutory duties. Examination of the structure and history of the internal timing provisions at issue in this case supports the conclusion that the courts should not dismiss a forfeiture action for noncompliance. Because § 1621 contains a statute of limitations—the usual legal protection against stale claims—we doubt Congress intended to require dismissal of a forfeiture action for noncompliance with the internal timing requirements of §§ 1602–1604. Cf. *United States* v. *$8,850*, 461 U. S., at 563, n. 13.

Statutes requiring customs officials to proceed with dispatch have existed at least since 1799. See Act of Mar. 2, 1799, § 89, 1 Stat. 695–696. These directives help to ensure that the Government is prompt in obtaining revenue from forfeited property. It would make little sense to interpret directives designed to ensure the expeditious collection of revenues in a way that renders the Government unable, in certain circumstances, to obtain its revenues at all.

We hold that courts may not dismiss a forfeiture action filed within the 5-year statute of limitations for noncompliance with the internal timing requirements of §§ 1602–1604. The Government filed the action in this case within the 5-year statute of limitations, and that sufficed to make it timely. We reverse the contrary holding of the Court of Appeals.

IV

The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE SCALIA joins, and with whom JUSTICE O'CONNOR joins as to Parts II and III, concurring in part and dissenting in part.

I concur in Parts I and III of the Court's opinion and dissent with respect to Part II. The Court today departs from longstanding historical precedent and concludes that the *ex parte* warrant requirement under the Fourth Amendment fails to afford adequate due process protection to property owners who have been convicted of a crime that renders their real property susceptible to civil forfeiture under 21 U. S. C. §881(a)(7). It reaches this conclusion although no such adversary hearing is required to deprive a criminal defendant of his liberty before trial. And its reasoning casts doubt upon long settled law relating to seizure of property to enforce income tax liability. I dissent from this ill-considered and disruptive decision.

I

The Court applies the three-factor balancing test for evaluating procedural due process claims set out in *Mathews* v. *Eldridge,* 424 U. S. 319 (1976), to reach its unprecedented holding. I reject the majority's expansive application of *Mathews. Mathews* involved a due process challenge to the adequacy of administrative procedures established for the purpose of terminating Social Security disability benefits, and the *Mathews* balancing test was first conceived to address due process claims arising in the context of modern administrative law. No historical practices existed in this context for the Court to consider. The Court has expressly rejected the notion that the *Mathews* balancing test constitutes a "one-size-fits-all" formula for deciding every due process claim that comes before the Court. See *Medina* v. *California,* 505 U. S. 437 (1992) (holding that the Due Process Clause has limited operation beyond the specific guarantees enumerated in the Bill of Rights). More importantly, the Court does not work on a clean slate in the civil forfeiture context involved here. It has long sanctioned summary proceedings in civil forfeitures. See, *e. g., Dobbins's Distillery* v. *United States,* 96 U. S. 395 (1878) (upholding seizure of a distillery by executive officers based on *ex parte* warrant); and *G. M. Leasing Corp.* v. *United States,* 429 U. S. 338 (1977) (upholding warrantless automobile seizures).

A

The Court's fixation on *Mathews* sharply conflicts with both historical practice and the specific textual source of the Fourth Amendment's "reasonableness" inquiry. The Fourth Amendment strikes a balance between the people's security in their persons, houses, papers, and effects and the public interest in effecting searches and seizures for law enforcement purposes. *Zurcher* v. *Stanford Daily*, 436 U. S. 547, 559 (1978); see also *Maryland* v. *Buie*, 494 U. S. 325, 331 (1990); and *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 619 (1989). Compliance with the standards and procedures prescribed by the Fourth Amendment constitutes all the "process" that is "due" to respondent Good under the Fifth Amendment in the forfeiture context. We made this very point in *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), with respect to procedures for detaining a criminal defendant pending trial:

> "The historical basis of the probable cause requirement is quite different from the relatively recent application of variable procedural due process in debtor-creditor disputes and termination of government-created benefits. The Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person *or property* in criminal cases, including the detention of suspects pending trial." *Id.*, at 125, n. 27 (emphasis added).

The *Gerstein* Court went on to decide that while there must be a determination of probable cause by a neutral magistrate in order to detain an arrested suspect prior to trial, such a determination could be made in a nonadversarial proceeding, based on hearsay and written testimony. *Id.*, at 120. It is paradoxical indeed to hold that a criminal defendant can be temporarily deprived of liberty on the basis of an *ex parte* probable-cause determination, yet respondent Good cannot be temporarily deprived of property on the same basis. As we said in *United States* v. *Monsanto,* 491 U. S. 600, 615–616 (1989):

> "[I]t would be odd to conclude that the Government may not restrain property, such as the home and apartment in respondent's possession, based on a finding of probable cause, when we have held that (under appropriate circumstances), the Government may restrain *persons* where there is a finding of probable cause to believe that the accused has committed a serious offense."

Similarly, in *Graham* v. *Connor,* 490 U. S. 386, 394–395 (1989), the Court faced the question of what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We held that the Fourth Amendment, rather than the Due Process Clause, provides the source of any specific limitations on the use of force in seizing a person: "Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process' must be the guide for analyzing these claims." *Id.,* at 395. The "explicit textual source of constitutional protection" found in the Fourth Amendment should also guide the analysis of respondent Good's claim of a right to additional procedural measures in civil forfeitures.

B

The Court dismisses the holdings of *Gerstein* and *Graham* as inapposite because they concern "the arrest or detention of criminal suspects." *Ante,* at 50. But we have never held that the Fourth Amendment is limited only to criminal proceedings. In *Soldal* v. *Cook County,* 506 U. S. 56, 67 (1992), we expressly stated that the Fourth Amendment "applies in the civil context as well." Our historical treatment of civil forfeiture procedures underscores the notion that the Fourth Amendment specifically governs the process afforded in the civil forfeiture context, and it is too late in the day to question its exclusive application. As we decided in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), there is no need to look beyond the Fourth Amendment in civil forfeiture proceedings involving the Government because *ex parte* seizures are " 'too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced.' " *Id.*, at 686 (quoting *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 510–511 (1921) (forfeiture not a denial of procedural due process despite the absence of preseizure notice and opportunity for a hearing)).

The Court acknowledges the long history of *ex parte* seizures of real property through civil forfeiture, see *Phillips* v. *Commissioner*, 283 U. S. 589 (1931); *Springer* v. *United States*, 102 U. S. 586 (1881); *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856); *United States* v. *Stowell*, 133 U. S. 1 (1890); and *Dobbins's Distillery* v. *United States*, 96 U. S. 395 (1878), and says "[w]ithout revisiting these cases," *ante*, at 59—whatever that means—that they appear to depend on the need for prompt payment of taxes. The Court goes on to note that the passage of the Sixteenth Amendment alleviated the Government's reliance on liquor, customs, and tobacco taxes as sources of operating revenue. Whatever the merits of this novel distinction, it fails entirely to distinguish the leading case in the field, *Phillips* v. *Commissioner*, *supra*, a unanimous opinion authored by Justice Brandeis. That case dealt with the enforcement of income tax liability, which the Court says has replaced earlier forms of taxation as the principal source of governmental revenue. There the Court said:

> "The right of the United States to collect its internal revenue by summary administrative proceedings has

> long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained." *Id.*, at 595 (footnote omitted).
>
> "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate." *Id.*, at 596–597.

Thus today's decision does not merely discard established precedents regarding excise taxes, but deals at least a glancing blow to the authority of the Government to collect income tax delinquencies by summary proceedings.

II

The Court attempts to justify the result it reaches by expansive readings of *Fuentes* v. *Shevin*, 407 U. S. 67 (1972), and *Connecticut* v. *Doehr*, 501 U. S. 1 (1991). In *Fuentes*, the Court struck down state replevin procedures, finding that they served no important state interest that might justify the summary proceedings. 407 U. S., at 96. Specifically, the Court noted that the tension between the private buyer's use of the property pending final judgment and the private seller's interest in preventing further use and deterioration of his security tipped the balance in favor of a prior hearing in certain replevin situations. "[The provisions] allow summary seizure of a person's possessions when no more than private gain is directly at stake." *Id.*, at 92. Cf. *Mitchell* v. *W. T. Grant Co.*, 416 U. S. 600 (1974) (upholding Louisiana sequestration statute that provided immediate postdeprivation hearing along with the option of damages).

The Court in *Fuentes* also was careful to point out the limited situations in which seizure before hearing was constitutionally permissible, and included among them "summary seizure of property to collect the internal revenue of the United States." 407 U. S., at 91–92 (citing *Phillips* v. *Commissioner, supra*). Certainly the present seizure is analogous, and it is therefore quite inaccurate to suggest that *Fuentes* is authority for the Court's holding in the present case.

Likewise in *Doehr,* the Court struck down a state statute authorizing prejudgment attachment of real estate without prior notice or hearing due to potential bias of the self-interested private party seeking attachment. The Court noted that the statute enables one of the private parties to "'make use of state procedures with the overt, significant assistance of state officials,'" that involve state action "'substantial enough to implicate the Due Process Clause.'" *Connecticut* v. *Doehr, supra,* at 11 (quoting *Tulsa Professional Collection Services, Inc.* v. *Pope,* 485 U. S. 478, 486 (1988)). The Court concluded that, absent exigent circumstances, the private party's interest in attaching the property did not justify the burdening of the private property owner's rights without a hearing to determine the likelihood of recovery. 501 U. S., at 18. In the present case, however, it is not a private party but the Government itself which is seizing the property.

The Court's effort to distinguish *Calero-Toledo* v. *Pearson Yacht Leasing Co.,* 416 U. S. 663 (1974), is similarly unpersuasive. The Court says that "[c]entral to our analysis in *Calero-Toledo* was the fact that a yacht was the 'sort [of property] that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given.'" *Ante,* at 52 (quoting *Calero-Toledo, supra,* at 679). But this is one of the *three* reasons given by the Court for upholding the summary forfeiture in that case: The other two—"fostering the public interest in preventing continued illicit use of the property," and the fact that the "seizure is not initiated by self-interested private parties; rather, Commonwealth officials determine whether seizure is appropriate . . . ," 416 U. S., at 679—are both met in the present case. And while not capable of being moved or concealed, the real property at issue here surely could be destroyed or damaged. Several dwellings are located on the property that was seized from respondent Good, and these buildings could easily be destroyed or damaged to prevent them from falling into the hands of the Government if prior notice were required.

The government interests found decisive in *Calero-Toledo* are equally present here: The seizure of respondent Good's real property serves important governmental purposes in combating illegal drugs; a preseizure notice might frustrate this statutory purpose by permitting respondent Good to destroy or otherwise damage the buildings on the property; and Government officials made the seizure rather than self-interested private parties seeking to gain from the seizure. Although the Court has found some owners entitled to an immediate postseizure administrative hearing, see, *e. g., Mitchell* v. *W. T. Grant Co., supra,* not until the majority adopted the Court of Appeals ruling have we held that the Constitution demanded notice and a *preseizure* hearing to satisfy due process requirements in civil forfeiture cases.*

III

This is not to say that the Government's use of civil forfeiture statutes to seize real property in drug cases may not cause hardship to innocent individuals. But I have grave

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*Ironically, courts and commentators have debated whether even a *warrant* should be required for civil forfeiture seizures, not whether *notice* and a *preseizure hearing* should apply. See, *e. g.,* Nelson, Should the Ranch Go Free Because the Constable Blundered? Gaining Compliance with Search and Seizure Standards in the Age of Asset Forfeiture, 80 Calif. L. Rev. 1309 (1992); Ahuja, Civil Forfeiture, Warrantless Property Seizures, and the Fourth Amendment, 5 Yale L. & Policy Rev. 428 (1987); and Comment, Forfeiture, Seizures and the Warrant Requirement, 48 U. Chi. L. Rev. 960 (1981). Forcing the Government to notify the affected property owners and go through a preseizure hearing in civil forfeiture cases must have seemed beyond the pale to these commentators.

doubts whether the Court's decision in this case will do much to alleviate those hardships, and I am confident that whatever social benefits might flow from the decision are more than offset by the damage to settled principles of constitutional law which are inflicted to secure these perceived social benefits. I would reverse the decision of the Court of Appeals *in toto.*

JUSTICE O'CONNOR, concurring in part and dissenting in part.

Today the Court declares unconstitutional an act of the Executive Branch taken with the prior approval of a Federal Magistrate Judge in full compliance with the laws enacted by Congress. On the facts of this case, however, I am unable to conclude that the seizure of Good's property did not afford him due process. I agree with the Court's observation in an analogous case more than a century ago: "If the laws here in question involved any wrong or unnecessary harshness, it was for Congress, or the people who make congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the government." *Springer* v. *United States*, 102 U. S. 586, 594 (1881).

I

With respect to whether 19 U. S. C. §§1602–1604 impose a timeliness requirement over and above the statute of limitations, I agree with the dissenting judge below that the Ninth Circuit improperly "converted a set of housekeeping rules for the government into statutory protection for the property of malefactors." 971 F. 2d 1376, 1384 (1992). I therefore join Parts I and III of the Court's opinion.

I cannot agree, however, that under the circumstances of this case—where the property owner was previously convicted of a drug offense involving the property, the Government obtained a warrant before seizing it, and the residents were not dispossessed—there was a due process violation simply because Good did not receive preseizure notice and an opportunity to be heard. I therefore respectfully dissent from Part II of the Court's opinion; I also join Parts II and III of the opinion of THE CHIEF JUSTICE.

II

My first disagreement is with the Court's holding that the Government must give notice and a hearing before seizing *any* real property prior to forfeiting it. That conclusion is inconsistent with over a hundred years of our case law. We have already held that seizure for purpose of forfeiture is one of those "extraordinary situations," *Fuentes* v. *Shevin*, 407 U. S. 67, 82 (1972) (internal quotation marks omitted), in which the Due Process Clause does not require predeprivation notice and an opportunity to be heard. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 676–680 (1974). As we have recognized, *Calero-Toledo* "clearly indicates that due process does not require federal [agents] to conduct a hearing before seizing items subject to forfeiture." *United States* v. *$8,850*, 461 U. S. 555, 562, n. 12 (1983); see also *United States* v. *Von Neumann*, 474 U. S. 242, 249, n. 7 (1986). Those cases reflect the commonsense notion that the property owner receives all the process that is due at the forfeiture hearing itself. See *id.*, at 251 ("[The claimant's] right to a [timely] forfeiture proceeding . . . satisfies any due process right with respect to the [forfeited property]"); *Windsor* v. *McVeigh*, 93 U. S. 274, 279 (1876).

The distinction the Court tries to draw between our precedents and this case—the only distinction it *can* draw—is that real property is somehow different than personal property for due process purposes. But that distinction has never been considered constitutionally relevant in our forfeiture cases. Indeed, this Court rejected precisely the same distinction in a case in which we were presented with a due process challenge to the forfeiture of real property for back taxes:

> "The power to distrain personal property for the payment of taxes is almost as old as the common law. . . . Why is it not competent for Congress to apply to realty as well as personalty the power to distrain and sell when necessary to enforce the payment of a tax? It is only the further legitimate exercise of the same power for the same purpose." *Springer, supra,* at 593–594.

There is likewise no basis for distinguishing between real and personal property in the context of forfeiture of property used for criminal purposes. The required nexus between the property and the crime—that it be used to commit, or facilitate the commission of, a drug offense—is the same for forfeiture of real and personal property. Compare 21 U. S. C. § 881(a)(4) with § 881(a)(7); see *Austin* v. *United States,* 509 U. S. 602, 619–622 (1993) (construing the two provisions equivalently). Forfeiture of real property under similar circumstances has long been recognized. *Dobbins's Distillery* v. *United States,* 96 U. S. 395, 399 (1878) (upholding forfeiture of "the real estate used to facilitate the [illegal] operation of distilling"); see also *United States* v. *Stowell,* 133 U. S. 1 (1890) (upholding forfeiture of land and buildings used in connection with illegal brewery).

The Court attempts to distinguish our precedents by characterizing them as being based on "executive urgency." *Ante,* at 60. But this case, like all forfeiture cases, also involves executive urgency. Indeed, the Court in *Calero-Toledo* relied on the same cases the Court disparages:

> "[D]ue process is not denied when postponement of notice and hearing is necessary to protect the public from contaminated food, *North American [Cold] Storage Co.* v. *Chicago,* 211 U. S. 306 (1908); . . . or to aid the collection of taxes, *Phillips* v. *Commissioner,* 283 U. S. 589 (1931); or the war effort, *United States* v. *Pfitsch,* 256 U. S. 547 (1921)." 416 U. S., at 679.

The Court says that there is no "plausible claim of urgency today to justify the summary seizure of real property under § 881(a)(7)." *Ante*, at 61. But we said precisely the opposite in *Calero-Toledo:* "The considerations that justified postponement of notice and hearing in those cases are present here." 416 U. S., at 679. The *only* distinction between this case and *Calero-Toledo* is that the property forfeited here was realty, whereas the yacht in *Calero-Toledo* was personalty.

It is entirely spurious to say, as the Court does, that executive urgency depends on the nature of the property sought to be forfeited. The Court reaches its anomalous result by mischaracterizing *Calero-Toledo*, stating that the movability of the yacht there at issue was "[c]entral to our analysis." *Ante*, at 52. What we actually said in *Calero-Toledo*, however, was that "preseizure notice and hearing might frustrate the interests served by [forfeiture] statutes, since the property seized—as here, a yacht—will *often be of a sort* that could be removed to another jurisdiction, destroyed, or concealed, if advance warning of confiscation were given." 416 U. S., at 679 (emphasis added). The fact that the yacht could be sunk or sailed away was relevant to, but hardly dispositive of, the due process analysis. In any event, land and buildings *are* subject to damage or destruction. See *ante*, at 72 (REHNQUIST, C. J., concurring in part and dissenting in part). Moreover, that was just one of the three justifications on which we relied in upholding the forfeiture in *Calero-Toledo*. The other two—the importance of the governmental purpose and the fact that the seizure was made by government officials rather than private parties—are without a doubt equally present in this case, as THE CHIEF JUSTICE's opinion demonstrates. *Ante*, at 71–72.

III

My second disagreement is with the Court's holding that the Government acted unconstitutionally in seizing *this* real property for forfeiture without giving Good prior notice and an opportunity to be heard. I agree that the due process inquiry outlined in *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976)—which requires a consideration of the private interest affected, the risk of erroneous deprivation and the value of additional safeguards, and the Government's interest—provides an appropriate analytical framework for evaluating whether a governmental practice violates the Due Process Clause notwithstanding its historical pedigree. Cf. *Medina* v. *California*, 505 U. S. 437, 453 (1992) (O'CONNOR, J., concurring in judgment). But this case is an *as applied* challenge to the seizure of Good's property; on these facts, I cannot conclude that there was a constitutional violation.

The private interest at issue here—the owner's right to control his property—is significant. Cf. *Connecticut* v. *Doehr*, 501 U. S. 1, 11 (1991) ("[T]he property interests that attachment affects are significant"). Yet the preforfeiture intrusion in this case was minimal. Good was not living on the property at the time, and there is no indication that his possessory interests were in any way infringed. Moreover, Good's tenants were allowed to remain on the property. The property interest of which Good was deprived was the value of the rent during the period between seizure and the entry of the judgment of forfeiture—a monetary interest identical to that of the property owner in *United States* v. *$8,850*, 461 U. S. 555 (1983), in which we stated that preseizure notice and hearing were not required.

The Court emphasizes that people have a strong interest in their homes. *Ante*, at 53–55, 61. But that observation confuses the Fourth and the Fifth Amendments. The "sanctity of the home" recognized by this Court's cases, *e. g.*, *Payton* v. *New York*, 445 U. S. 573, 601 (1980), is founded on a concern with governmental *intrusion* into the owner's possessory or privacy interests—the domain of the Fourth Amendment. Where, as here, the Government obtains a warrant supported by probable cause, that concern is allayed. The

Fifth Amendment, on the other hand, is concerned with *deprivations* of property interests; for due process analysis, it should not matter whether the property to be seized is real or personal, home or not. The relevant inquiry is into the governmental interference with the owner's interest in whatever property is at issue, an intrusion that is minimal here.

Moreover, it is difficult to see what advantage a preseizure adversary hearing would have had in this case. There was already an *ex parte* hearing before a magistrate to determine whether there was probable cause to believe that Good's property had been used in connection with a drug trafficking offense. That hearing ensured that the probable validity of the claim had been established. Cf. *Sniadach* v. *Family Finance Corp. of Bay View,* 395 U. S. 337, 343 (1969) (Harlan, J., concurring). The Court's concern with innocent owners (see *ante,* at 55–56) is completely misplaced here, where the warrant affidavit indicated that the property owner had already been convicted of a drug offense involving the property. See App. 29–31.

At any hearing—adversary or not—the Government need only show probable cause that the property has been used to facilitate a drug offense in order to seize it; it will be unlikely that giving the property owner an opportunity to respond will affect the probable-cause determination. Cf. *Gerstein* v. *Pugh,* 420 U. S. 103, 121–122 (1975). And we have already held that property owners have a due process right to a prompt *post*seizure hearing, which is sufficient to protect the owner's interests. See *$8,850, supra,* at 564–565; *Von Neumann,* 474 U. S., at 249.

The Government's interest in the property is substantial. Good's use of the property to commit a drug offense conveyed all right and title to the United States, although a judicial decree of forfeiture was necessary to perfect the Government's interest. See *United States* v. *Parcel of Rumson, N. J., Land,* 507 U. S. 111, 125–127 (1993) (plurality opinion); cf. *Doehr, supra,* at 16 (noting that the plaintiff "had no existing interest in Doehr's real estate when he sought the attachment"). Seizure allowed the Government to protect its inchoate interest in the property itself. Cf. *Mitchell* v. *W. T. Grant Co.,* 416 U. S. 600, 608–609 (1974).

Seizure also permitted the Government "to assert *in rem* jurisdiction over the property in order to conduct forfeiture proceedings, thereby fostering the public interest in preventing continued illicit use of the property and in enforcing criminal sanctions." *Calero-Toledo,* 416 U. S., at 679 (footnote omitted); see also *Fuentes,* 407 U. S., at 91, n. 23, citing *Ownbey* v. *Morgan,* 256 U. S. 94 (1921). In another case in which the forfeited property was land and buildings, this Court stated:

> "Judicial proceedings *in rem,* to enforce a forfeiture, cannot in general be properly instituted until the property inculpated is previously seized by the executive authority, as it is the preliminary seizure of the property that brings the same within the reach of such legal process." *Dobbins's Distillery,* 96 U. S., at 396, citing *The Brig Ann,* 9 Cranch 289 (1815).

The Government in *Dobbins's Distillery* proceeded almost exactly as it did here: The United States Attorney swore out an affidavit alleging that the premises were being used as an illegal distillery, and thus were subject to forfeiture; a federal judge issued a seizure warrant; a deputy United States marshal seized the property by posting notices thereon admonishing anyone with an interest in it to appear before the court on a stated date; and the court, after a hearing at which Dobbins claimed his interest, ordered the property forfeited to the United States. See Record in *Dobbins's Distillery* v. *United States,* No. 145, O. T. 1877, pp. 2–8, 37–39, 46–48. The Court noted that "[d]ue executive seizure was made in this case of the distillery and of the real and personal property used in connection with the same." 96 U. S., at 396.

The Court objects that the rule has its origins in admiralty cases, and has no applicability when the object of the forfeiture is real property. But Congress has specifically made the customs laws applicable to drug forfeitures, regardless of whether the Government seeks to forfeit real or personal property. 21 U. S. C. § 881(d); cf. *Tyler* v. *Defrees*, 11 Wall. 331, 346 (1871) ("Unquestionably, it was within the power of Congress to provide a full code of procedure for these cases [involving the forfeiture of real property belonging to rebels], but it chose to [adopt], as a general rule, a well-established system of administering the law of capture"). Indeed, just last Term, we recognized in a case involving the seizure and forfeiture of real property that "it long has been understood that a valid seizure of the res is a prerequisite to the *initiation* of an *in rem* civil forfeiture proceeding." *Republic Nat. Bank of Miami* v. *United States*, 506 U. S. 80, 84 (1992).

Finally, the burden on the Government of the Court's decision will be substantial. The practical effect of requiring an adversary hearing before seizure will be that the Government will conduct the full forfeiture hearing on the merits before it can claim its interest in the property. In the meantime, the Government can protect the important *federal* interests at stake only through the vagaries of state laws. And while under the current system only a few property owners contest the forfeiture, the Court's opinion creates an incentive and an opportunity to do so, thus increasing the workload of federal prosecutors and courts.

For all these reasons, I would reverse the judgment of the Court of Appeals. I therefore respectfully dissent from Part II of the opinion of the Court.

JUSTICE THOMAS, concurring in part and dissenting in part.

Two fundamental considerations seem to motivate the Court's due process ruling: first, a desire to protect the rights incident to the ownership of real property, especially residences, and second, a more implicitly expressed distrust of the Government's aggressive use of broad civil forfeiture statutes. Although I concur with both of these sentiments, I cannot agree that Good was deprived of due process of law under the facts of this case. Therefore, while I join Parts I and III of the Court's opinion, I dissent from Part II.

Like the majority, I believe that "[i]ndividual freedom finds tangible expression in property rights." *Ante*, at 61. In my view, as the Court has increasingly emphasized the creation and delineation of entitlements in recent years, it has not always placed sufficient stress upon the protection of individuals' traditional rights in real property. Although I disagree with the outcome reached by the Court, I am sympathetic to its focus on the protection of property rights—rights that are central to our heritage. Cf. *Payton* v. *New York*, 445 U. S. 573, 601 (1980) ("[R]espect for the sanctity of the home . . . has been embedded in our traditions since the origins of the Republic"); *Entick* v. *Carrington*, 19 How. St. Tr. 1029, 1066 (C. P. 1765) ("The great end, for which men entered into society, was to secure their property").

And like the majority, I am disturbed by the breadth of new civil forfeiture statutes such as 21 U. S. C. § 881(a)(7), which subjects to forfeiture *all* real property that is used, or intended to be used, in the commission, or even the *facilitation*, of a federal drug offense.[1] As JUSTICE O'CONNOR points out, *ante*, at 74–76, since the Civil War we have upheld statutes allowing for the civil forfeiture of real property. A strong argument can be made, however, that § 881(a)(7) is so broad that it differs not only in degree, but in kind, from its historical antecedents. See, *e. g.*, Brief for Respondents 19–21. Indeed, it is unclear whether the central theory behind *in rem* forfeiture, the fiction "that the thing is primarily considered the offender," *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 511 (1921), can fully justify the immense scope of § 881(a)(7). Under this provision, "large tracts of land [and any improvements thereon] which have no connection with crime other than being the location where a drug transaction occurred," Brief for Respondents 20, are subject to forfeiture. It is difficult to see how such real property is necessarily in any sense "guilty" of an offense, as could reasonably be argued of, for example, the distillery in *Dobbins's Distillery* v. *United States*, 96 U. S. 395 (1878), or the pirate vessel in *Harmony* v. *United States*, 2 How. 210 (1844). Given that current practice under § 881(a)(7) appears to be far removed from the legal fiction upon which the civil forfeiture doctrine is based, it may be necessary—in an appropriate case—to reevaluate our generally deferential approach to legislative judgments in this area of civil forfeiture.[2]

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[1] Other courts have suggested that Government agents, and the statutes under which they operate, have gone too far in the civil forfeiture context. See, *e. g.*, *United States* v. *All Assets of Statewide Auto Parts, Inc.*, 971 F. 2d 896, 905 (CA2 1992) ("We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes"); *United States* v. *One Parcel of Property*, 964 F. 2d 814, 818 (CA8 1992) ("[W]e are troubled by the government's view that *any* property,

In my view, however, Good's due process claim does not present that "appropriate" case. In its haste to serve laudable goals, the majority disregards our case law and ignores

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whether it be a hobo's hovel or the Empire State Building, can be seized by the government because the owner, regardless of his or her past criminal record, engages in a single drug transaction"), rev'd *sub nom. Austin* v. *United States*, 509 U. S. 602 (1993).

[2] Such a case may arise in the excessive fines context. See *Austin* v. *United States*, 509 U. S., at 628 (SCALIA, J., concurring in part and concurring in judgment) (suggesting that "[t]he relevant inquiry for an excessive forfeiture under [21 U. S. C.] § 881 is the relationship of the property to the offense: Was it close enough to render the property, under traditional standards, 'guilty' and hence forfeitable?").

the critical facts of the case before it. As the opinions of THE CHIEF JUSTICE, *ante*, at 69–72, and JUSTICE O'CONNOR, *ante*, at 74–76, persuasively demonstrate, the Court's opinion is predicated in large part upon misreadings of important civil forfeiture precedents, especially *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974).[3] I will not repeat the critiques found in the other dissents, but will add that it is twice puzzling for the majority to explain cases such as *Springer* v. *United States*, 102 U. S. 586 (1881), and *Dobbins's Distillery, supra*, as depending on the Federal Government's urgent need for revenue in the 19th century. First, it is somewhat odd that the Court suggests that the Government's financial concerns might justifiably control the due process analysis, see *ante*, at 59–60, and second, it is difficult to believe that the prompt collection of funds was more essential to the Government a century ago than it is today.

I agree with the other dissenters that a fair application of the relevant precedents to this case would indicate that no due process violation occurred. But my concerns regarding the legitimacy of the current scope of the Government's real property forfeiture operations lead me to consider these cases as only helpful to the analysis, not dispositive. What convinces me that Good's due process rights were not violated are the facts of this case—facts that are disregarded by the Court in its well-intentioned effort to protect "innocent owners" from mistaken Government seizures. *Ante*, at 55. The Court forgets that "this case is an *as applied* challenge to the seizure of Good's property." *Ante*, at 77 (O'CONNOR, J., concurring in part and dissenting in part). In holding that the Government generally may not seize real property prior to a final judgment of forfeiture, see *ante*, at 59, 62, the

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[3] With scant support, the Court also dispenses with the ancient jurisdictional rule that "a valid seizure of the res is a prerequisite to the *initiation* of an *in rem* civil forfeiture proceeding," *Republic Nat. Bank of Miami* v. *United States*, 506 U. S. 80, 84 (1992), at least in the case of real property. See *ante*, at 57–58.

Court effectively declares that many of the customs laws are facially unconstitutional as they apply under 21 U. S. C. § 881(d) to forfeiture actions brought pursuant to § 881(a)(7). See, *e. g.*, 19 U. S. C. §§ 1602, 1605 (authorizing seizure prior to adversary proceedings). We should avoid reaching beyond the question presented in order to fashion a broad constitutional rule when doing so is unnecessary for resolution of the case before us. Cf. *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring). The Court's overreaching is particularly unfortunate in this case because the Court's solicitude is so clearly misplaced: Good is not an "innocent owner"; he is a convicted drug offender.

Like JUSTICE O'CONNOR, I cannot agree with the Court that "under the circumstances of this case—where the property owner was previously convicted of a drug offense involving the property, the Government obtained a warrant before seizing it, and the residents were not dispossessed—there was a due process violation simply because Good did not receive preseizure notice and an opportunity to be heard." *Ante*, at 73–74 (O'CONNOR, J., concurring in part and dissenting in part). Wherever the due process line properly should be drawn, in circumstances such as these, a preseizure hearing is not required as a matter of constitutional law. Moreover, such a hearing would be unhelpful to the property owner. As a practical matter, it is difficult to see what purpose it would serve. Notice, of course, is provided by the conviction itself. In my view, seizure of the property without more formalized notice and an opportunity to be heard is simply one of the many unpleasant collateral consequences that follows from conviction of a serious drug offense. Cf. *Price* v. *Johnston*, 334 U. S. 266, 285 (1948) ("Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights").

It might be argued that this fact-specific inquiry is too narrow. Narrow, too, however, was the first question presented to us for review.[4] Moreover, when, as here, ambitious modern statutes and prosecutorial practices have all but detached themselves from the ancient notion of civil forfeiture, I prefer to go slowly. While I sympathize with the impulses motivating the Court's decision, I disagree with the Court's due process analysis. Accordingly, I respectfully dissent.

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[4] "Whether the seizure of the respondent real property for forfeiture, pursuant to a warrant issued by a magistrate judge based on a finding of probable cause, violated the Due Process Clause of the Fifth Amendment because the owner (who did not reside on the premises) was not given notice and an opportunity for a hearing prior to the seizure." Pet. for Cert. I.

JOHN HANCOCK MUTUAL LIFE INSURANCE CO. *v.* HARRIS TRUST AND SAVINGS BANK, AS TRUSTEE OF THE SPERRY MASTER RETIREMENT TRUST NO. 2

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 92–1074. Argued October 12, 1993—Decided December 13, 1993

Petitioner John Hancock Mutual Life Insurance Company (Hancock) and respondent Harris Trust and Savings Bank (Harris), the current trustee of a corporation's retirement plan, are party to Group Annuity Contract No. 50 (GAC 50), an agreement of a type known as a "participating group annuity." Under such a contract, the insurer commingles with its general corporate assets deposits received to secure retiree benefits, and does not immediately apply those deposits to the purchase of annuities. During the life of the contract, however, amounts credited to the deposit account may be converted into a stream of guaranteed benefits for individual retirees. Funds in excess of those that have been so converted are referred to as "free funds." Dissatisfied over its inability to gain access to GAC 50's free funds, Harris filed this suit pursuant to, *inter alia,* the Employee Retirement Income Security Act of 1974 (ERISA), alleging that Hancock is managing "plan assets," and therefore is subject to ERISA's fiduciary standards in its administration of GAC 50. Hancock responded that its undertaking fits within the ERISA provision, 29 U. S. C. § 1101(b)(2)(B), that excludes from "plan assets" a "guaranteed benefit policy," defined as an insurance policy or contract "to the extent that [it] provides for benefits the amount of which is guaranteed by the insurer." The District Court granted Hancock summary judgment on the ERISA claims, holding that it was not a fiduciary with respect to any portion of GAC 50. Reversing in part, the Court of Appeals held that the "guaranteed benefit policy" exclusion did not cover the GAC 50 free funds, as to which Hancock provides no guarantee of benefit payments or fixed rates of return.

Held: Because the GAC 50 free funds are "plan assets," Hancock's actions in regard to their management and disposition must be judged against ERISA's fiduciary standards. Pp. 94–110.

(a) The import of the pertinent ERISA provisions, read as a whole and in light of the statute's broad purpose of protecting retirement benefits, is reasonably clear. In contrast to other ERISA provisions creating unqualified exemptions from the statute's reach, Congress specifically instructed, by the words of limitation it used in § 1101(b)(2)(B), that the guaranteed benefit policy exclusion be closely contained: The deposits over which Hancock is exercising authority or control under GAC 50 must have been obtained "solely" by reason of the issuance of "an insurance policy or contract" that provides for benefits "the amount of which is guaranteed," and even then the exemption applies only "to the extent" that GAC 50 provides for such benefits. Pp. 94–97.

(b) The Court rejects Hancock's contention that, because Congress reserved to the States primary responsibility for regulating the insurance industry, ERISA's requirement that a fiduciary act "*solely* in the interest of . . . participants and beneficiaries and . . . for the *exclusive purpose* of . . . providing benefits," § 1104(a)(1)(A)(i) (emphasis added), must yield to conflicting state-law requirements that an insurer managing general account assets consider the interest of, and maintain equity among, all of its contractholders, creditors, and shareholders. The McCarran-Ferguson Act—which provides, among other things, that no federal "Act . . . shall be construed to . . . supersede any [state] law . . . enacted . . . for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance"—does not support Hancock's contention, since ERISA and the guaranteed benefit policy provision obviously and specifically "relat[e] to the business of insurance." Moreover, although state laws concerning an insurer's management of general account assets "regulat[e] insurance" in the words of ERISA's saving clause—which instructs that ERISA "shall not be construed to exempt . . . any person from any [state] law . . . which regulates insurance," § 1144(b)(2)(A)—state laws regulating general accounts also can "relate to [an] employee benefit plan" under ERISA's encompassing preemption clause, which directs that the statute "shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan," § 1144(a). There is no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis. Thus, ERISA leaves room for complementary or dual federal and state regulation, and calls for federal supremacy when the two regimes cannot be harmonized or accommodated. Pp. 97–101.

(c) Hancock is an ERISA fiduciary with respect to the free funds it holds under GAC 50. To determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Cf., *e. g., SEC* v. *United Benefit Life Ins. Co.*, 387 U. S. 202. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries, as Hancock indisputably did with respect to certain GAC 50 benefits not at issue. As to a contract's free funds, the insurer must guarantee a reasonable rate of return on those funds and provide a mechanism to convert them into guaranteed benefits at rates set by the contract. While another contract, with a different set of features, might satisfy these requirements, GAC 50 does not; indeed, Hancock provided no real guarantee that benefits in any amount would be payable from the free funds. Pp. 101–106.

(d) The Court declines to follow the Labor Department's view that ERISA's fiduciary obligations do not apply in relation to assets held by an insurer in its general account under contracts like GAC 50. The 1975 interpretive bulletin assertedly expressing this view did not originally have the scope now attributed to it, since it expressly addressed only a question regarding the scope of the prohibited transaction rules, and did not mention or elaborate upon its applicability to the guaranteed benefit policy exemption or explain how an unqualified exclusion for an insurer's general asset account can be reconciled with Congress' choice of a more limited ("to the extent that") formulation. Moreover, as of 1992, the Department apparently had no firm position to communicate, since it declined to file a brief in the Court of Appeals, citing the need to fully consider all of the implications of the issues. This Court will not accord deference to the Department's current view, since, by reading the statutory words "to the extent" to mean nothing more than "if," the Department has exceeded the scope of available ambiguity. Pp. 106–110.

970 F. 2d 1138, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, STEVENS, SCALIA, and SOUTER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which O'CONNOR and KENNEDY, JJ., joined, *post*, p. 111.

Howard G. Kristol argued the cause for petitioner. With him on the briefs were *Robert M. Peak*, *Rosalie A. Hailey*, and *Richard J. J. Scarola*.

Christopher J. Wright argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Bryson*, *Acting Deputy Solicitor General Kneedler*, *Judith E. Kramer*, *Allen H. Feldman*, *Nathaniel I. Spiller*, and *Elizabeth Hopkins*.

Lawrence Kill argued the cause for respondent. With him on the brief was *John B. Berringer.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case presents an issue of statutory construction—whether the fiduciary standards stated in the Employee Retirement Income Security Act of 1974 (ERISA) govern an insurance company's conduct in relation to certain annuity contracts. Fiduciary status under ERISA generally attends the management of "plan assets." The statute, however, contains no comprehensive definition of "plan assets." Our task in this case is to determine the bounds of a statutory exclusion from "plan asset" categorization, an exclusion Congress prescribed for "guaranteed benefit polic[ies]."

The question before us arises in the context of a contract between defendant-petitioner John Hancock Mutual Life Insurance Company (Hancock) and plaintiff-respondent Harris Trust and Savings Bank (Harris), current trustee of a Sperry Rand Corporation Retirement Plan.[1] Pursuant to its con-

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*Briefs of *amici curiae* urging reversal were filed for the State of New York et al. by *Robert Abrams*, Attorney General of New York, and *Jerry Boone*, Solicitor General, and *Scott Harshbarger*, Attorney General of Massachusetts; for the American Council of Life Insurance by *James F. Jorden, Stephen H. Goldberg, Perry Ian Cone, Waldemar J. Pflepsen, Jr., Richard E. Barnsback, Stephen W. Kraus*, and *Phillip E. Stano;* and for the Life Insurance Council of New York by *Theodore R. Groom, Stephen M. Saxon, William F. Hanrahan, William J. Flanagan*, and *Raymond A. D'Amico.*

Briefs of *amici curiae* urging affirmance were filed for Certain United States Senators and Representatives by *Howard M. Metzenbaum, pro se;* for the American Association of Retired Persons et al. by *Cathy Ventrell-Monsees, Joan S. Wise, Mary Ellen Signorille*, and *Edgar Pauk;* and for the Western Conference of Teamsters Pension Trust Fund by *William H. Song, Brigid Carroll Anderson*, and *Timothy St. Clair Smith.*

[1] Sperry Rand Corporation has undergone a number of changes in name and corporate form since 1941, when the contract with Hancock was initially made; for convenience, we use in this opinion only the employer-corporation's original name, Sperry.

tract with Harris, Hancock receives deposits from the Sperry Plan. Harris asserts that Hancock is managing "plan assets," and therefore bears fiduciary responsibility. Hancock maintains that its undertaking fits within the statutory exclusion for "guaranteed benefit polic[ies]." "Guaranteed benefit policy" is not a trade term originating in the insurance industry; it is a statutory invention placed in ERISA and there defined as an insurance policy or contract that "provides for benefits the amount of which is guaranteed by the insurer." 88 Stat. 875, 29 U. S. C. § 1101(b)(2)(B).

The contract in suit is of a kind known in the trade as a "deposit administration contract" or "participating group annuity."[2] Under a contract of this type, deposits to secure retiree benefits are not immediately applied to the purchase of annuities; instead, the deposits are commingled with the insurer's general corporate assets, and deposit account balances reflect the insurer's overall investment experience. During the life of the contract, however, amounts credited to the deposit account may be converted into a stream of guaranteed benefits for individual retirees.

We granted certiorari, 507 U. S. 983 (1993), to resolve a split among Courts of Appeals regarding the applicability of the guaranteed benefit policy exclusion to annuity contracts of the kind just described. The Second Circuit in the case we review held that the guaranteed benefit policy exclusion did not cover funds administered by Hancock that bear no fixed rate of return and have not yet been converted into guaranteed benefits. 970 F. 2d 1138, 1143–1144 (1992). We agree with the Second Circuit that ERISA's fiduciary obligations bind Hancock in its management of such funds, and accordingly affirm that court's judgment.

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[2] For descriptions of these contracts, see D. McGill & D. Grubbs, Fundamentals of Private Pensions 551–564 (6th ed. 1989) (hereinafter McGill & Grubbs); see also Goldberg & Altman, The Case for the Nonapplication of ERISA to Insurers' General Account Assets, 21 Tort & Ins. L. J. 475, 478–482 (1986) (hereinafter Goldberg & Altman).

I

The parties refer to the contract at issue as Group Annuity Contract No. 50 (GAC 50). Initially, GAC 50 was a simple deferred annuity contract under which Sperry purchased from Hancock individual deferred annuities, at rates fixed by the contract, for employees eligible under the Sperry Retirement Plan.

Since its origination in 1941, however, GAC 50 has been transformed by amendments. By the time this litigation commenced, the contract included the following features. Assets and liabilities under GAC 50 were recorded (for bookkeeping purposes) in two accounts—the "Pension Administration Fund" recorded assets, and the "Liabilities of the Fund," liabilities. GAC 50 assets were not segregated, however; they were part of Hancock's pool of corporate funds, or general account, out of which Hancock pays its costs of operation and satisfies its obligations to policyholders and other creditors. See Agreed Statement of Facts ¶¶ 11–19, App. 85–86; Brief for Petitioner 7–9; see also McGill & Grubbs 492 (describing general accounts); *id.*, at 552 (describing asset allocation under deposit administration contracts). Hancock agreed to allocate to GAC 50's Pension Administration Fund a pro rata portion of the investment gains and losses attributable to Hancock's general account assets, Agreed Statement of Facts ¶ 11, App. 85, and also guaranteed that the Pension Administration Fund would not fall below its January 1, 1968, level, Agreed Statement of Facts ¶ 27, *id.*, at 88.

GAC 50 provided for conversion of the Pension Administration Fund into retirement benefits for Sperry employees in this way. Upon request of the Sperry Plan Administrator, Hancock would guarantee full payment of all benefits to which a designated Sperry retiree was entitled; attendant liability would then be recorded by adding an amount, set by

Hancock, to the Liabilities of the Fund.[3] In the event that the added liability caused GAC 50's "Minimum Operating Level"—the Liabilities of the Fund plus a contingency cushion of five percent—to exceed the amount accumulated in the Pension Administration Fund, the "active" or "accumulation" phase of the contract would terminate automatically. In that event, Hancock would purchase annuities at rates stated in the contract to cover all benefits previously guaranteed by Hancock under GAC 50, and the contract itself would convert back to a simple deferred annuity contract. Agreed Statement of Facts ¶¶ 33, 36–37, 42, *id.*, at 89–91.

As GAC 50 was administered, amounts recorded in the Pension Administration Fund were used to provide retirement benefits to Sperry employees in other ways. In this connection, the parties use the term "free funds" to describe the excess in the Pension Administration Fund over the Minimum Operating Level (105 percent of the amount needed to provide guaranteed benefits). In 1977, Sperry Plan trustee Harris obtained the right to direct Hancock to use the free funds to pay "nonguaranteed benefits" to retirees. These benefits were provided monthly on a pay-as-you-go basis; they were nonguaranteed in the sense that Hancock was obligated to make payments only out of free funds, *i. e.*, only when the balance in the Pension Administration Fund exceeded the Minimum Operating Level.

Additionally, in 1979 and again in 1981, Hancock permitted Harris to transfer portions of the free funds pursuant to "rollover" procedures. Agreed Statement of Facts ¶ 78, *id.*, at 96. Finally, in 1988, a contract amendment allowed Harris to transfer over $50 million from the Pension Administration Fund without triggering the contract's "asset liquidation adjustment," a mechanism for converting the book value of the transferred assets to market value.

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[3] This liability calculation established, in effect, the price for Hancock's guarantee of a specified benefit stream. The liability associated with a given benefit entitlement was to be calculated using rates that, since 1972, could be altered by Hancock. Agreed Statement of Facts ¶ 39, App. 90.

While Harris in fact used these various methods to effect withdrawals from the Pension Administration Fund, Hancock maintains that only the original method—conversion of the Pension Administration Fund into guaranteed benefits—is currently within the scope of Harris' contract rights. In May 1982, Hancock gave notice that it would no longer make nonguaranteed benefit payments. Agreed Statement of Facts ¶¶ 82–87, *id.*, at 97–98. And since 1981 Hancock has refused all requests by Harris to make transfers using "rollover" procedures. Agreed Statement of Facts ¶ 79, *id.*, at 96.

Harris last exercised its right to convert Pension Administration Fund accumulations into guaranteed benefits in 1977. Agreed Statement of Facts ¶ 81, *id.*, at 97. Harris contends, and Hancock denies, that the conversion price has been inflated by incorporation of artificially low interest rate assumptions.

One means remains by which Harris may gain access to GAC 50's free funds. Harris can demand transfer of those funds in their entirety out of the Pension Administration Fund. Harris has not taken that course because it entails an asset liquidation adjustment Harris regards as undervaluing the plan's share of Hancock's general account. In sum, nothing was removed from the Pension Administration Fund or converted into guaranteed benefits between June 1982 and 1988. During that period the free funds increased dramatically as a result of Hancock's continuing positive investment experience, the allocation of a portion of that experience to the Pension Administration Fund, and the absence of any offsetting increase in the Liabilities of the Fund for additional guaranteed benefits.

Harris commenced this action in July 1983, contending, *inter alia,* that Hancock breached its fiduciary obligations under ERISA by denying Harris any realistic means to make use of GAC 50's free funds. Hancock responded that ERISA's fiduciary standards do not apply because GAC 50, in its entirety, "provides for benefits the amount of which is guaranteed by the insurer" within the meaning of the "guaranteed benefit policy" exclusion accorded by 29 U. S. C. § 1101(b)(2)(B).

In September 1989, the District Court granted Hancock's motion for summary judgment on Harris' ERISA claims, holding that Hancock was not an ERISA fiduciary with respect to any portion of GAC 50. 722 F. Supp. 998 (SDNY 1989). The District Court thereafter dismissed Harris' remaining contract and tort claims. See 767 F. Supp. 1269 (1991). On appeal, the Second Circuit reversed in part. The Court of Appeals determined that although Hancock "provides guarantees with respect to one portion of the benefits derived from [GAC 50], it does not do so at all times with respect to all the benefits derived from the other, or free funds, portion" of the contract. 970 F. 2d, at 1143. The free funds "were not converted to fixed, guaranteed obligations but instead were subject to fluctuation based on the insurer's investment performance." *Id.*, at 1144. With respect to those free funds, the Second Circuit concluded, Hancock "provides no guarantee of benefit payments or fixed rates of return." *Ibid.* The Court of Appeals accordingly ruled that ERISA's fiduciary standards govern Hancock's management of the free funds, and it instructed the District Court to determine whether those standards had been satisfied. *Ibid.*

II

A

Is Hancock a fiduciary with respect to any of the funds it administers under GAC 50? To answer that question, we examine first the language of the governing statute, guided not by "a single sentence or member of a sentence, but look[ing] to the provisions of the whole law, and to its object and policy." *Pilot Life Ins. Co.* v. *Dedeaux,* 481 U. S. 41, 51 (1987), quoting *Kelly* v. *Robinson,* 479 U. S. 36, 43 (1986) (internal quotation marks omitted). The obligations of an ERISA fiduciary are described in 29 U. S. C. § 1104(a)(1): A fiduciary must discharge its duties with respect to a plan

> "solely in the interest of the participants and beneficiaries and—
>
> "(A) for the exclusive purpose of:
>
> "(i) providing benefits to participants and their beneficiaries . . . ."

A person is a fiduciary with respect to an employee benefit plan

> "to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises *any authority or control respecting management or disposition of its assets* . . . ." 29 U. S. C. § 1002(21)(A) (emphasis added).

The "assets" of a plan are undefined except by exclusion in § 1101(b)(2), which reads in relevant part:

> "In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer."

A "guaranteed benefit policy," in turn, is defined as

> "an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account." § 1101(b)(2)(B).[4]

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[4] As noted by Goldberg and Altman, the term "guaranteed benefit contract . . . has never been a part of the insurance industry lexicon." Goldberg & Altman 482. ERISA itself must thus supply the term's meaning.

Although these provisions are not mellifluous, read as a whole their import is reasonably clear. To help fulfill ERISA's broadly protective purposes,[5] Congress commodiously imposed fiduciary standards on persons whose actions affect the amount of benefits retirement plan participants will receive. See 29 U. S. C. § 1002(21)(A) (defining as a fiduciary any person who "exercises any authority or control respecting management or disposition of [a plan's] assets"); H. R. Conf. Rep. No. 93–1280, p. 296 (1974) (the "fiduciary responsibility rules generally apply to all employee benefit plans . . . in or affecting interstate commerce"). The guaranteed benefit policy exclusion from ERISA's fiduciary regime[6] is markedly confined: The deposits over which Hancock is exercising authority or control under GAC 50 must have been obtained "solely" by reason of the issuance of "an insurance policy or contract" that provides for benefits "the amount of which is guaranteed," and even then it is only "to the extent" that GAC 50 provides for such benefits that the § 1101(b)(2)(B) exemption applies.

In contrast, elsewhere in the statute Congress spoke without qualification. For example, Congress exempted from the definition of plan assets "*any security*" issued to a plan by a registered investment company. 29 U. S. C. § 1101(b)(1) (emphasis added). Similarly, Congress exempted "*any assets* of . . . an insurance company or *any assets* of a plan which are held by . . . an insurance company" from the requirement that plan assets be held in trust. § 1103(b)(2) (emphasis added). Notably, the guaranteed benefit policy exemption is not available to "any" insurance contract that provides for guaranteed benefits but only "to the extent that" the contract does so. See Comment, Insurers Beware: General Account Activities May Subject Insurance Companies to ERISA's Fiduciary Obligations, 88 Nw. U. L. Rev. 803, 833–834 (1994). Thus, even were we not inclined, generally, to tight reading of exemptions from comprehensive schemes of this kind, see, *e. g., Commissioner* v. *Clark,* 489 U. S. 726, 739–740 (1989) (when a general policy is qualified by an exception, the Court "usually read[s] the exception narrowly in order to preserve the primary operation of the [policy]"), *A. H. Phillips, Inc.* v. *Walling,* 324 U. S. 490, 493 (1945) (cautioning against extending exemptions "to other than those plainly and unmistakably within its terms"), Congress has specifically instructed, by the words of limitation it used, that we closely contain the guaranteed benefit policy exclusion.

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[5] See, *e. g., Massachusetts* v. *Morash,* 490 U. S. 107, 112–113 (1989); *Metropolitan Life Ins. Co.* v. *Massachusetts,* 471 U. S. 724, 732 (1985). The statute's statement of purpose observes that "the continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit plans]" and declares it "desirable . . . that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans . . . ." 29 U. S. C. § 1001(a).

[6] Section 1101(b) also provides an exclusion for assets held by "an investment company registered under the Investment Company Act of 1940." 29 U. S. C. § 1101(b)(1).

B

Hancock, joined by some *amici,* raises a threshold objection. ERISA's fiduciary standards cannot govern an insurer's administration of general account contracts, Hancock asserts, for that would pose irreconcilable conflicts between state and federal regulatory regimes. ERISA requires fiduciaries to act "*solely* in the interest of the participants and beneficiaries and . . . for the *exclusive purpose* of . . . providing benefits to participants and their beneficiaries." 29 U. S. C. § 1104(a) (emphasis added). State law, however, requires an insurer, in managing general account assets, "to consider the interests of all of its contractholders, creditors and shareholders," and to "maintain equity among its various constituencies." Goldberg & Altman 477.[7] To head off conflicts, Hancock contends, ERISA must yield, because Congress reserved to the States primary responsibility for regulation of the insurance industry. We are satisfied that Congress did not order the unqualified deferral to state law that Hancock both advocates and attributes to the federal lawmakers. Instead, we hold, ERISA leaves room for complementary or dual federal and state regulation, and calls for federal supremacy when the two regimes cannot be harmonized or accommodated.

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[7] See, *e. g.,* N. Y. Ins. Law § 4224(a)(1) (McKinney 1985) (prohibiting unfair discrimination between contractholders); see also *Mack Boring & Parts* v. *Meeker Sharkey Moffitt, Actuarial Consultants of New Jersey,*

To support its contention, Hancock refers first to the McCarran-Ferguson Act, 59 Stat. 33, as amended, 15 U. S. C. § 1011 *et seq.*, which provides:

> "The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation . . . of such business." 15 U. S. C. § 1012(a).
>
> "No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . ." § 1012(b).

But as the United States points out, "ERISA, both in general and in the guaranteed benefit policy provision in particular, obviously and specifically relates to the business of insurance." Brief for United States as *Amicus Curiae* 23, n. 13.[8] Thus, the McCarran-Ferguson Act does not surrender regulation exclusively to the States so as to preclude the application of ERISA to an insurer's actions under a general account contract. See *ibid.*

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930 F. 2d 267, 275, n. 17 (CA3 1991) (noting state regulations requiring insurers to treat all contractholders fairly and equitably). See generally McGill & Grubbs 492–494.

[8] We called attention to the "deliberately expansive" character of ERISA's preemption provisions in *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 45–46 (1987).

More problematic are two clauses in ERISA itself, one broadly providing for preemption of state law, the other preserving, or saving from preemption, state laws regulating insurance. ERISA's encompassing preemption clause directs that the statute "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U. S. C. § 1144(a). The "saving clause," however, instructs that ERISA "shall [not] be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." § 1144(b)(2)(A). State laws concerning an insurer's management of general account assets can "relate to [an] employee benefit plan" and thus fall under the preemption clause, but they are also, in the words of the saving clause, laws "which regulat[e] insurance."

ERISA's preemption and saving clauses "'are not a model of legislative drafting,'" *Pilot Life*, 481 U. S., at 46, quoting *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 739 (1985), and the legislative history of these provisions is sparse, see *id.*, at 745–746. In accord with the District Court in this case, however, see 722 F. Supp., at 1003–1004, we discern no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis. State law governing insurance generally is not displaced, but "where [that] law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress," federal preemption occurs. *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 248 (1984).[9]

We note in this regard that even Hancock does not ascribe a discrete office to the "saving clause" but instead asserts that the clause "reaffirm[s] the McCarran-Ferguson Act's reservation of the business of insurance to the States." Brief for Petitioner 31; see *Metropolitan Life,* 471 U. S., at 744, n. 21 (saving clause "appears to have been designed to preserve the McCarran-Ferguson Act's reservation of the business of insurance to the States"; saving clause and McCarran-Ferguson Act "serve the same federal policy and utilize similar language"). As the United States recognizes, "dual regulation under ERISA and state law is not an impossibility[;] [m]any requirements are complementary, and in the case of a direct conflict, federal supremacy principles require that state law yield." Brief for United States as *Amicus Curiae* 23, n. 13.[10]

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[9] No decision of this Court has applied the saving clause to supersede a provision of ERISA itself. See, *e. g., FMC Corp.* v. *Holliday*, 498 U. S. 52, 61 (1990) (ERISA-covered benefit plans that purchase insurance policies are governed by both ERISA and state law; self-insured plans are subject only to ERISA); *Metropolitan Life*, 471 U. S., at 746–747 (same).

In resisting the argument that, with respect to general account contracts, state law, not federal law, is preemptive, we are mindful that Congress had before it, but failed to pass, just such a scheme. The Senate's proposed version of ERISA would have excluded all general account assets from the reach of the fiduciary rules.[11] Instead of enacting the

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[10] See *Chicago Bd. Options Exchange, Inc.* v. *Connecticut General Life Ins. Co.,* 713 F. 2d 254, 260 (CA7 1983) ("That ERISA does not relieve insurance companies of the onus of state regulation does not mean that Congress intended ERISA not to apply to insurance companies. Had that been Congress' intent . . . ERISA would have directly stated that it was pre-empted by state insurance laws."); 722 F. Supp. 998, 1004 (SDNY 1989) ("dual regulation comports with the language of the preemption and saving clauses, . . . which save certain state statutes from preemption, but which also assume that ERISA applies ab initio").

[11] The Senate version of ERISA originally defined an "employee benefit fund" to exclude "premium[s], subscription charges, or deposits received and retained by an insurance carrier . . . except for any separate account established or maintained by an insurance carrier," and defined a fiduciary as "any person who exercises any power of control, management, or disposition with respect to any moneys or other property of any employee benefit fund . . . ." See S. 4, 93d Cong., 1st Sess., §§ 502(17)(B), (25), reprinted in Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 94th Cong., 2d Sess., Legislative History of ERISA 147, 150 (Comm. Print 1976). After an amendment (Amdt. No. 496, Sept. 17, 1973), the provision regarding "Fiduciary Standards" was streamlined to exclude

Senate draft, which would indeed have "settled [insurance industry] expectations," see *post*, at 111, Congress adopted an exemption containing words of limitation. We are directed by those words, and not by the discarded draft. Cf. *Russello* v. *United States*, 464 U. S. 16, 23–24 (1983) (when Congress deletes limiting language, "it may be presumed that the limitation was not intended").[12]

Persuaded that a plan's deposits are not shielded from the reach of ERISA's fiduciary prescriptions solely by virtue of their placement in an insurer's general account, we proceed to the question the Second Circuit decided: Is Hancock an ERISA fiduciary with respect to the free funds it holds under GAC 50?

C

To determine GAC 50's qualification for ERISA's guaranteed benefit policy exclusion, we follow the Seventh Circuit's lead, see *Peoria Union Stock Yards Co. Retirement Plan* v. *Penn Mutual Life Ins. Co.*, 698 F. 2d 320, 324–327 (1983), and seek guidance from this Court's decisions construing the insurance policy exemption ordered in the Securities Act of 1933. See 48 Stat. 75, 15 U. S. C. § 77c(a)(8) (excluding from the reach of the Securities Act "[a]ny insurance or endowment policy or annuity contract or optional annuity contract").

In *SEC* v. *Variable Annuity Life Ins. Co. of America*, 359 U. S. 65 (1959), we observed that "the concept of 'insurance' involves some investment risk-taking on the part of the company," and "a guarantee that at least some fraction of the

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"funds held by an insurance carrier unless that carrier holds funds in a separate account." S. 4, Amdt. No. 496, § 511, *id.*, at 1451.

[12] Congress' failure to pass a blanket exclusion for funds held by an insurer in its general account also counsels against reading the second sentence of the guaranteed benefit policy exception, 29 U. S. C. § 1101(b)(2)(B), which includes all *separate account* assets within the definition of "plan assets," as implying that assets held in an insurer's general account are necessarily *not* plan assets.

benefits will be payable in fixed amounts." *Id.*, at 71. A variable annuity, we held, is not an "insurance policy" within the meaning of the statutory exemption because the contract's entire *investment* risk remains with the policyholder inasmuch as "benefit payments vary with the success of the [insurer's] investment policy," *id.*, at 69, and may be "greater or less, depending on the wisdom of [that] policy," *id.*, at 70.

Thereafter, in *SEC* v. *United Benefit Life Ins. Co.*, 387 U. S. 202 (1967), we held that an annuity contract could be considered a nonexempt investment contract during the contract's accumulation phase, and an exempt insurance contract once contractually guaranteed fixed payouts began. Under the contract there at issue, the policyholder paid fixed monthly premiums which the issuer placed in a fund—called the "Flexible Fund"—invested by the issuer primarily in common stocks. At contract maturity the policyholder could either withdraw the cash value of his proportionate share of the fund (which the issuer guaranteed would not fall below a specified value), or convert to a fixed-benefit annuity, with payment amounts determined by the cash value of the policy. During the accumulation phase, the fund from which the policyholder would ultimately receive benefits fluctuated in value according to the insurer's investment results; because the "insurer promises to serve as an investment agency and allow the policyholder to share in its investment experience," *id.*, at 208, this phase of the contract was serving primarily an investment, rather than an insurance, function, *ibid.*

The same approach—division of the contract into its component parts and examination of risk allocation in each component—appears well suited to the matter at hand because ERISA instructs that the § 1101(b)(2)(B) exemption applies only "*to the extent that*" a policy or contract provides for "benefits *the amount of which is guaranteed.*" Analyzing GAC 50 this way, we find that the contract fits the statutory exclusion only in part.

This much is not in dispute. During the contract's active, accumulation phase, any benefits payable by Hancock for which entries actually have been made in the Liabilities of the Fund fit squarely within the "guaranteed" category. Furthermore, if the active phase of the contract were to end, all benefits thereafter payable under the contract would be guaranteed in amount. To this extent also, GAC 50 "provides for benefits the amount of which is guaranteed."

We turn, then, to the nub of the controversy, Hancock's responsibility for administration of the free funds during GAC 50's active phase. Between 1977 and 1982, we note first, GAC 50 furnished retirement benefits expressly called "nonguaranteed"; those benefits, it is undisputed, entailed no "amount . . . guaranteed by the insurer." 29 U. S. C. § 1101(b)(2)(B); see *supra*, at 92. To that extent, GAC 50 does not fall within the statutory exemption. But the nonguaranteed benefit option is not the only misfit.

GAC 50, in key respects, is similar to the Flexible Fund contract examined in *United Benefit.* In that case, as in this one, the contract's aggregate value depended upon the insurer's success as an investment manager. Under both contracts, until the occurrence of a triggering event—contract maturity in the Flexible Fund case, Harris' exercise of its conversion option in the case of GAC 50—the investment risk is borne primarily by the contractholder. Confronting a contract bearing similar features, the Seventh Circuit stated:

> "The pension trustees did not buy an insurance contract with a fixed payout; they turned over the assets of the pension plan to [the insurer] to manage with full investment discretion, subject only to a modest income guaranty. If the pension plan had hired an investment advisor and given him authority to buy and sell securities at his discretion for the plan's account, the advisor would be a fiduciary within the meaning of [ERISA], and that is essentially what the trustees did during the accumula-

> tion phase of th[is] contract . . . ." *Peoria Union,* 698 F. 2d, at 327.

In the Second Circuit's words, "[t]o the extent that [Hancock] engages in the discretionary management of assets attributable to that phase of the contract which provides no guarantee of benefit payments or fixed rates of return, it seems to us that [Hancock] should be subject to fiduciary responsibility." 970 F. 2d, at 1144.

Hancock urges that to the full extent of the free funds—and hence, to the full extent of the contract—GAC 50 "provides for" benefits the amount of which is guaranteed, inasmuch as "Harris Trust . . . has the right . . . to use any 'free funds' to purchase future guaranteed benefits under the contract, in addition to benefits previously guaranteed." Brief for Petitioner 26; see also *Mack Boring & Parts* v. *Meeker Sharkey Moffitt, Actuarial Consultants of New Jersey,* 930 F. 2d 267, 273 (CA3 1991) (statute's use of phrase "provides for" does not require that the benefits contracted for be delivered immediately; it is enough that the contract provides for guaranteed benefits "at some finite point in the future").

Logically pursued, Hancock's reading of the statute would exempt from ERISA's fiduciary regime any contract, in its entirety, so long as the funds held thereunder could be used at some point in the future to purchase some amount of guaranteed benefits.[13] But Congress did not say a contract is exempt "if" it provides for guaranteed benefits; it said a contract is exempt only "*to the extent*" it so provides. Using these words of limitation, Congress apparently recognized that contracts may provide to *some* extent for something other than guaranteed benefits, and expressly declared the exemption unavailable to that extent.

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[13] This argument resembles one rejected in *SEC* v. *United Benefit Life Ins. Co.,* 387 U. S. 202 (1967). In *United Benefit,* the policyholder was protected somewhat against fluctuations in the value of the contract fund through a promise that the cash value of the contract would not fall below the aggregate amount of premiums deposited with the insurer. *Id.,* at 205, 208, n. 10. We held that although this "guarantee of cash value based on net premiums reduces substantially the investment risk of the contract holder, the assumption of an investment risk cannot by itself create an insurance provision under the federal definition. The basic difference between a contract which to some degree is insured and a contract of insurance must be recognized." *Id.,* at 211 (citation omitted).

Tellingly with respect to GAC 50, the Pension Administration Fund is guaranteed only against a decline below its January 1, 1968, level. See *supra*, at 91. Harris thus bears a substantial portion of the risk as to fluctuations in the free funds, and there is not even the "modest income guaranty" the Seventh Circuit found insufficient in *Peoria Union*. 698 F. 2d, at 327. Furthermore, Hancock has the authority to set the price at which free funds are convertible into guaranteed benefits. See *supra*, at 92, n. 3. In combination, these features provide no genuine guarantee of the amount of benefits that plan participants will receive in the future.

It is true but irrelevant, Hancock pleads, that GAC 50 provides no guaranteed return to the plan, for ERISA uniformly uses the word "benefits" to refer exclusively to payments to plan participants or beneficiaries, not payments to plans. Brief for Petitioner 25; see also *Mack Boring*, 930 F. 2d, at 273 ("benefits" refers only to payments to participants or beneficiaries; payments to plan sponsors can be variable without defeating guaranteed benefit exclusion); Goldberg & Altman 482. This confinement of the word "benefits," however, perfectly fits the tight compass of the exclusion. A contract component that provides for something other than guaranteed payments to plan participants or beneficiaries—*e. g.*, a guaranteed return to the plan—does not, without more, provide for guaranteed *benefits* and thus does not fall within the statutory exclusion. Moreover, the guaranteed benefit policy exclusion requires a guarantee of the *amount* of benefits to be provided; with no guaranteed investment return to the plan, and no guarantee regarding conversion price, plan participants are undeniably at risk inasmuch as the future amount of benefits—payments to participants and beneficiaries—attributable to the free funds can fall to zero. But see *post,* at 117, n. 4 (contending that the *plan's* guarantee renders immaterial the absence of a guarantee by the *insurer*). A contract of that order does not meet the statutory prescription.

In sum, we hold that to determine whether a contract qualifies as a guaranteed benefit policy, each component of the contract bears examination. A component fits within the guaranteed benefit policy exclusion only if it allocates investment risk to the insurer. Such an allocation is present when the insurer provides a genuine guarantee of an aggregate amount of benefits payable to retirement plan participants and their beneficiaries. As to a contract's "free funds"—funds in excess of those that have been converted into guaranteed benefits—these indicators are key: the insurer's guarantee of a reasonable rate of return on those funds and the provision of a mechanism to convert the funds into guaranteed benefits at rates set by the contract. While another contract, with a different mix of features, might satisfy these requirements, GAC 50 does not. Indeed, Hancock provided no real guarantee that benefits in any amount would be payable from the free funds. We therefore conclude, as did the Second Circuit, that the free funds are "plan assets," and that Hancock's actions in regard to their management and disposition must be judged against ERISA's fiduciary standards.

III

One other contention pressed by Hancock and *amici* deserves consideration. Hancock, supported by the United States, asserts that the Department of Labor has adhered consistently to the view that ERISA's fiduciary obligations do not apply in relation to assets held by an insurer in its general account under contracts like GAC 50.[14] Hancock urges us to follow this view based on "'the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" Brief for Petitioner 39, quoting *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944); see also *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–844 (1984).

Hancock and the United States place primary reliance on an early interpretive bulletin in which the Department of Labor stated:

> "If an insurance company issues a contract or policy of insurance to a plan and places the consideration for such contract or policy in its general asset account, the assets in such account shall not be considered to be plan assets. Therefore, a subsequent transaction involving the general asset account between a party in interest and the insurance company will not, solely because the plan has been issued such a contract or policy of insurance, be a prohibited transaction." Interpretive Bulletin 75–2, 40 Fed. Reg. 31598 (1975), 29 CFR §2509.75–2(b) (1992).

If this passage squarely addressed the question we confront, namely, whether ERISA's fiduciary standards apply to assets held under participating annuity contracts like GAC 50, we would indeed have a clear statement of the Department's view on the matter at issue. But, as the second sentence of the quoted passage shows, the question addressed in Interpretive Bulletin 75–2 was "whether a party in interest has engaged in a prohibited transaction [under 29 U. S. C. § 1106] with an employee benefit plan." §2509.75–2.[15] The Department did not mention, let alone elaborate on, any grounding for Interpretive Bulletin 75–2 in § 1101's guaranteed benefit policy exemption, nor did the Bulletin speak of the application of its pronouncement, if any, to ERISA's fiduciary duty prescriptions.

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[14] The Department of Labor shares enforcement responsibility for ERISA with the Department of the Treasury. See 29 U. S. C. § 1204(a).

[15] The subsection title for the interpretation, published in the Code of Federal Regulations, is "Interpretive bulletin relating to prohibited transactions."

The Department asserts the absence of any textual basis for the view, adopted by the Second Circuit, that "certain assets [can be considered] plan assets for general fiduciary duty purposes but not for prohibited transaction purposes," 970 F. 2d, at 1145, and, accordingly, no reason to suppose that Interpretive Bulletin 75–2's statement regarding plan assets would not apply in both contexts. See Brief for United States as *Amicus Curiae* 26–27. Nothing in Interpretive Bulletin 75–2 or 29 CFR § 2509.75–2 (1992), however, sets forth that position, or otherwise alerts the reader that more than the prohibited transaction exemption was then subject to the Department's scrutiny.[16] Had the Department intended Interpretive Bulletin 75–2 to apply to the guaranteed benefit policy exclusion, it would have had to explain how an unqualified exclusion for an insurer's general asset account can be reconciled with Congress' choice of a more limited ("to the extent that") formulation. Its silence in that regard is an additional indication that the 1975 pronouncement did not originally have the scope the Department now attributes to it.[17]

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[16] It is noteworthy that the Secretary of Labor has express authority to grant exemptions from the rules regarding prohibited transactions, but not from § 1104's fiduciary duty provisions. See 29 U. S. C. § 1108.

[17] After a lengthy rulemaking proceeding, the Department did promulgate, in 1986, a comprehensive interpretation of what ERISA means by "plan assets." See 51 Fed. Reg. 41278 (1986), 29 CFR § 2510.3–101 (1992). Again, however, the Department did not mention the guaranteed benefit policy exemption contained in § 1101(b) or refer to the status of assets in that setting. See 29 CFR § 2510.3–101 (1992). The Department, without comment, "note[d] that the portion of Interpretive Bulletin 75–2 dealing with contracts or policies of insurance is not affected by the regulation being issued here." 51 Fed. Reg. 41278 (1986). But Interpretive Bulletin

We note, too, that the United States was unable to comply with the Second Circuit's request for its assistance in this very case; the Department of Labor informed the Court of Appeals, after requesting and receiving a substantial extension of time, that " 'the need to fully consider all of the implications of these issues within the Department precludes our providing the Court with a brief within a foreseeable time frame.' " 970 F. 2d, at 1141. We recognize the difficulties the Department faced, given the complexity of ERISA and the constant evolution of insurance contract practices as reflected in this case. Our point is simply that, as of 1992, the Department apparently had no firm position it was prepared to communicate.

We need not grapple here with the difficult question of the deference due an agency view first precisely stated in a brief supporting a petitioner. Cf. *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 476 (1992) ("If the Director asked us to defer to his *new* statutory interpretation, this case might present a difficult question regarding whether and under what circumstances deference is due to an interpretation formulated during litigation.") (emphasis in original). It suffices to recall, once again, Congress' words of limitation. The Legislature provided an exemption "to the extent that" a contract provides for guaranteed benefits. By reading the words "to the extent" to mean nothing more than "if," the Department has exceeded the scope of available ambiguity. See *Public Employees Retirement System of Ohio* v. *Betts*, 492 U. S. 158, 171 (1989) ("no deference is due to agency interpretations at odds with the plain language of the statute itself"). We therefore cannot accept current pleas for the deference described in *Skidmore* or *Chevron.*

75–2, as we just observed, did not home in on whether, or to what extent, particular insurance contracts fit within the guaranteed benefit policy exemption. Thus the 1986 publication is no more enlightening than the interpretation published in 1975.

The Department of Labor recognizes that ranking free funds as "plan assets" would secure "added legal protections against losses by pension plans, because ERISA imposes restrictions not currently provided by contract and insurance law." Brief for United States as *Amicus Curiae* 25–26. But the Department warns that

> "the disruptions and costs [of holding insurance companies to be fiduciaries under participating group annuity contracts] would be significant, both in terms of the administrative changes the companies would be forced to undertake (*e. g.*, segregation of plan-related assets into segmented or separate accounts, and re-allocation of operating costs to other policyholders) and in terms of the considerable exposure to the ensuing litigation that would be brought by pension plans and others alleging fiduciary breaches." *Id.*, at 25.

These are substantial concerns, but we cannot give them dispositive weight. The insurers' views have been presented to Congress[18] and that body can adjust the statute. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting); *Di Santo* v. *Pennsylvania,* 273 U. S. 34, 42 (1927) (Brandeis, J., dissenting). Furthermore, the Department of Labor can provide administrative relief to facilitate insurers' compliance with the law, thereby reducing the disruptions it forecasts.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Second Circuit is

Affirmed.

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[18] See App. to Brief for Petitioner 19–64 (listing the hundreds of individuals and organizations, including insurance industry representatives, testifying before Congress during deliberations on ERISA). Insurance industry representatives have constantly sought amendment of ERISA to exempt all general account assets. See Brief for Certain United States Senators as *Amici Curiae* 13–14.

JUSTICE THOMAS, with whom JUSTICE O'CONNOR and JUSTICE KENNEDY join, dissenting.

Insurance companies hold more than $332 billion in their general accounts pursuant to group annuity contracts with pension plans. See American Council of Life Insurance, 1993 Life Insurance Fact Book Update 27. Today, the Court abruptly overturns the settled expectations of the insurance industry by deeming a substantial portion of those funds "plan assets" and thus subjecting insurers to the fiduciary regime of the Employee Retirement Income Security Act of 1974 (ERISA). Although I agree with the Court that the guaranteed benefit policy exception, § 401(b)(2) of ERISA, 29 U. S. C. § 1101(b)(2), does not—as petitioner Hancock contends—exclude all general account assets from ERISA's coverage, the Court, in making the exception depend upon whether investment risk is allocated to the insurer, *ante*, at 106, proposes a new test that bears little relation to the statute Congress enacted. The relevant question under the statute is not whether the contract shifts investment risk, but whether, and to what extent, it "provides for benefits the amount of which is guaranteed." 29 U. S. C. § 1101(b)(2)(B). In my view, a contract can "provide for" guaranteed benefits before it actually guarantees future payouts—that is, before it shifts the investment risk as to those benefits to the insurer. Accordingly, I respectfully dissent.

I

The guaranteed benefit policy exception, § 401(b)(2) of ERISA, excludes from the scope of ERISA's fiduciary requirements assets held pursuant to "an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer." 29 U. S. C. § 1101(b)(2)(B). In interpreting this exception, I begin, as in any case of statutory construction, with "the language of the statute," *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475 (1992), and with the assumption that Congress "says in a statute what it means and means in a statute what it says there," *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 254 (1992). Unlike the Court, I see no need to base an understanding of § 401(b)(2) on principles derived from the interpretation of dissimilar provisions in the Securities Act of 1933, see *ante,* at 101–104, or from a sense of the policy of ERISA as a whole, see *ante,* at 96. The meaning of the provision can be determined readily by examining its component terms.

First, the insurance contract must "provide for" guaranteed benefits. Because "provides for" is not defined by the statute, we should give the phrase its ordinary or natural meaning. See *Smith* v. *United States,* 508 U. S. 223, 228 (1993). Looking at the contract, the Court observes that there is "no genuine guarantee of the amount of benefits that plan participants will receive in the future." *Ante,* at 105. The Court apparently takes "provides for" to mean that the contract must currently guarantee the amounts to be disbursed in future payments. That is not, however, what "provides for" means in ordinary speech.

When applied to a document such as a contract, "provides for" is "most natural[ly]" read and is "commonly understood" to mean " 'make a provision for.' " *Rake* v. *Wade,* 508 U. S. 464, 473, 474 (1993) (interpreting a section of the Bankruptcy Code that applies to " 'each allowed secured claim *provided for* by the [reorganization] plan' ") (emphasis added). See also Black's Law Dictionary 1224 (6th ed. 1990) (defining "provide" as "[t]o make, procure, or furnish for future use, prepare"). If "provides for" is construed in this way, the insurance contract need not guarantee the benefits for any particular plan participant until the benefits have vested, so long as it makes provision for the payment of guaranteed benefits in the future. See *Mack Boring & Parts* v. *Meeker Sharkey Moffitt, Actuarial Consultants,* 930 F. 2d 267, 273 (CA3 1991) ("Section 401(b)(2)(B) does not, on its face, require that the benefits contracted for be delivered immediately, and we will not read into the statute such a requirement. Rather, it is enough that the . . . contract 'provided' guaranteed benefits to plan participants at some finite point in the future").[1]

Had Congress intended the meaning the Court suggests, it easily could have applied the exception to an insurance contract "to the extent that benefits, the amount of which is guaranteed by the insurer, are vested in plan participants." The concept of vested benefits was familiar to Congress, see, *e. g.*, 29 U. S. C. § 1001(c), and it knew how to require vesting when it intended to do so. See ERISA § 1012(a), 26 U. S. C. § 411 (1988 ed. and Supp. IV). In the guaranteed benefit policy exception, however, Congress, rather than requiring that benefits be vested, required that guaranteed benefits be *provided for.*[2]

The second requirement under the statute is that the "amount" of benefits be guaranteed. The relevant "benefits" under the statute are payments to plan participants, not any payments to the pension plan itself. See *Mack Boring, supra,* at 273 ("[T]he term 'benefit,' when used in ERISA, uniformly refers only to payments due to the plan participants or beneficiaries"). The Court recognizes that the term "benefits" does not include payments to the plan but concludes that the reference to "the amount of" benefits means the *aggregate* amount of benefits. *Ante,* at 106. The Court cites neither authority nor reason for its interpretation, and with good cause. Given that "benefits" refers to payments to individuals, "amount" standing alone most naturally refers to the amount owed to each individual. If, on the other hand, "amount" means aggregate amount, benefits to individuals could vary so long as the insurance company guaranteed that a fixed total amount would be paid. That is hardly consistent with ERISA's focus on protecting plan participants and their beneficiaries. See *ante,* at 96, and n. 5; 29 U. S. C. § 1001(c).

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[1] Even Harris Trust, which argues that benefits are not "provided for" until they have vested in plan participants, see Brief for Respondent 15, cannot avoid this common meaning of the phrase. In describing the original contract between Sperry and Hancock, Harris Trust states that "the contract *provided for* the annual purchase of individual deferred annuities . . . ." *Id.*, at 2 (emphasis added). Certainly, one would not say—and Harris Trust did not mean—that the contract only "provided for" such annuities after they were purchased. Common sense and usage dictate precisely the sense in which Harris Trust used the phrase: The contract made provision for the purchase of annuities. Similarly, after 1968 the contract made provision for the payment of guaranteed benefits.

[2] Giving "provides for" its ordinary meaning as outlined here would not, as the Court suggests, see *ante*, at 104–105, exempt from ERISA's fiduciary rules any contract "in its entirety" if it allows for the payment of some amount of guaranteed benefits in the future. As the Court implicitly acknowledges, that potential misconstruction of the exception results, not from a misreading of the term "provides for," but from a misunderstanding of the limitation imposed by the phrase "to the extent that." As I discuss below, see *infra*, at 117–118, I agree with the Court that by limiting the exception to policies "to the extent that" they provide for guaranteed benefits, Congress did not mean that any contract would be completely exempted "if" it provided for any guaranteed benefits. *Ante*, at 104–105.

The Court's focus on the aggregate amount of benefits, combined with its understanding of "provides for" as requiring a current guarantee, shifts the inquiry from the nature of the benefits that the policy will provide to individuals to the nature of the return that the policy provides to the plan as a whole. In the Court's view, this is precisely the inquiry demanded by the statute. As it makes clear by its citation to *Peoria Union Stock Yards Co. Retirement Plan* v. *Penn Mutual Life Ins. Co.,* 698 F. 2d 320 (CA7 1983), from which it takes its "lead," *ante,* at 101, the Court sees the guaranteed benefit policy exception as requiring a guaranteed return on all moneys paid to the insurer—that is, the guaranteed benefit policy exception is really an exception for "insurance contract[s] with a fixed payout." *Peoria Union, supra,* at 327.[3] In reaching this result, the Court is driven by its gloss on the guaranteed benefit exception as a provision demanding an "examination of risk allocation in each component" of the policy. See *ante*, at 102. But Congress nowhere mentioned allocation of risk, fixed payouts, or guaranteed investment returns in the statute, despite the obvious superiority of those terms in conveying the meaning the Court ascribes to the text. Instead, Congress directed our attention to the provision of guaranteed benefits—that is, to the type of payments the policy provides to individual participants.

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[3] To be sure, the payouts must be in the form of guaranteed benefits to plan participants, but the Court's focus remains on an overall fixed return. Thus, in its view, any funds not immediately committed to the payment of

The Court derives its gloss on the guaranteed benefit policy exception from extratextual sources that lead it to a reading divorced from the statute's language. First, the Court begins its analysis not with an examination of the terms of § 401(b)(2), but with a discussion of cases decided under the Securities Act of 1933, 48 Stat. 74, as amended. For example, the Court looks to a case in which we addressed whether a variable annuity was an "investment contract" covered by § 2 of the Securities Act, 15 U. S. C. § 77b, or an "insurance or endowment policy or annuity contract or optional annuity contract" exempted by § 3 of that Act, 15 U. S. C. § 77c(a)(8). See *SEC* v. *United Benefit Life Ins. Co.*, 387 U. S. 202, 204–205, 211 (1967). Were it disputed that GAC 50 is an "insurance policy or contract," it might be useful to consider how this Court has defined an insurance policy under federal securities law and the extent to which GAC 50 meets that test. Here, however, no one denies that GAC 50 is an insurance policy. If it were not, § 401(b)(2) would not apply at all. Because GAC 50 is concededly an insurance policy, its allocation of risk is irrelevant to the distinct inquiry demanded by the statute into the provision of guaranteed benefits.

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guaranteed benefits (through the purchase, for example, of fixed annuities) must be invested at a guaranteed return and converted to guaranteed benefits at a rate fixed by contract. *Ante*, at 106.

The second source from which the Court distills its "risk of loss" test is the premise, based on ERISA "as a whole," that "Congress commodiously imposed fiduciary standards on persons whose actions affect the amount of benefits retirement plan participants will receive." *Ante,* at 96. Even were that true, there is no need to resort to such general understandings of the policy behind a statute when the language suggests a contrary meaning. Cf. *Connecticut Nat. Bank,* 503 U. S., at 253–254; *Park 'N Fly, Inc.* v. *Dollar Park & Fly, Inc.,* 469 U. S. 189, 194 (1985) (statutory construction begins with "the assumption that the ordinary meaning of [the] language accurately expresses the legislative purpose"). The text of § 401(b)(2) gives no reason to think that Congress meant to protect pension plans from all risk or to impose a fiduciary duty on the insurer whenever the pension plan faced a possibility of loss. Congress easily could have required that all funds credited to a pension plan be guaranteed, but it did not.

Moreover, contrary to the Court's assumption, in the statute "as a whole" Congress did not impose fiduciary duties on all persons whose actions affect the amount of benefits plan participants receive. In the same section that contains the guaranteed benefit policy exception, for example, Congress exempted pension plans' investments in mutual funds from ERISA's fiduciary provisions. See 29 U. S. C. § 1101(b)(1); H. R. Conf. Rep. No. 93–1280, p. 296 (1974). Obviously, pension plans bear a significant risk with respect to such investments, yet Congress allowed them to bear that risk without imposing fiduciary duties on the companies that manage the funds.

In any event, as long as a policy provides for guaranteed benefits as I have described them, the connection between the return to the plan and the amount of benefits individual plan participants receive is remote. The insurer's investment performance would influence the amount of benefits if participants received either variable benefits or fixed benefit payments that were not guaranteed, *e. g.*, benefits paid for a fixed amount of time unless the fund from which they were paid was depleted sooner. In both cases, ERISA imposes fiduciary duties on the insurer. But as long as the benefits will be guaranteed, a variable return to the plan entails no such risk for plan participants. Whether the insurer earns 2% or 20%, or even loses 20% on its investments, participants will receive the same amount of benefits.[4]

In short, the provision of guaranteed benefits does not require the provision of a guaranteed return to the plan, nor does it require that all amounts to be provided in the future be currently guaranteed. In my view, an insurance policy "provides for benefits the amount of which are guaranteed" when its terms make provision for fixed payments to plan participants and their beneficiaries that will be guaranteed by the insurer. The policy need not guarantee the aggregate amount of benefits that will ultimately be returned from the plan's contributions or insulate the plan from all investment risk to accomplish that more limited goal.

Of course, as the Court correctly observes, § 401(b)(2) excludes an insurance company's assets from fiduciary obligations only "to the extent that" the policy provides for guaranteed benefits. That limitation does not mean that the exception is available to a contract "if" it provides for guaranteed benefits. Cf. *ante,* at 104–105. Rather, the term suggests that a contract may provide for guaranteed benefits only to a certain extent. In the Court's view, to the extent that a policy allows a pension plan a variable return on free funds not yet committed to providing guaranteed benefits to participants, it falls outside the § 401(b)(2) exception. Once again, however, the Court's understanding of the statute is controlled by its focus on the allocation of risk. The difficulty the Court sees with the variable return on any component of the contract is that a variable return ensures no guaranteed aggregate amount of benefits. If all of the funds attributable to the policy are allocated to purchasing guaranteed benefits, however, whether those funds come from pension plan contributions or investment return, the contract is "provid[ing] for benefits the amount of which is guaranteed" in its entirety. Only if one assumes, as the Court does, that overall returns are critical would one read the "to the extent that" limitation more narrowly.

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[4] In this case, Sperry's retirement plan, not the insurance policy, specifies the amount of benefits to which a plan participant is entitled. App. 119, 121. The return on the funds held under GAC 50 has no effect on that amount. Thus, even if the free funds fell to zero and the policy terminated, see *ante*, at 105–106, plan participants whose benefits had not yet vested would be entitled to the same amount of benefits under the plan itself, and would have an action against the plan if it failed to pay. See 29 U. S. C. § 1132(a). For this reason, it is simply wrong to suggest, as some *amici curiae* do, that reversing the decision below would leave millions of pensioners unprotected by ERISA. See Brief for Senator Howard Metzenbaum et al. as *Amici Curiae* 15. If the plan, on the other hand, is "trapped" by an unwise insurance contract, the trap is one of its own making. Those *amici* are in a far better position than this Court to persuade Congress to protect pension plans from their own mistakes and misjudgments. Nothing in either the text or the logic of the guaranteed benefit policy exception provides such protection.

II

In its effort to insulate Harris Trust from all risk, the Court radically alters the law applicable to insurance companies. The Department of Labor has taken the view that general account assets are not plan assets. See, *e. g.,* Interpretive Bulletin 75–2, 40 Fed. Reg. 31598 (1975), 29 CFR § 2509.75–2 (1992) (concerning prohibited transactions); § 2510.3–101 (same).[5] In reliance on that settled understanding, insurers have set up general account contracts with pension plans and have managed assets theoretically attributable to those policies, not in accordance with ERISA's fiduciary obligations, but in accordance with potentially incompatible state-law rules. See *Mack Boring*, 930 F. 2d, at 275, n. 17. Most States treat the relationship between insurer and insured as a matter of contract, not a fiduciary relationship. See, *e. g., Benefit Trust Life Ins. Co.* v. *Union Nat. Bank of Pittsburgh*, 776 F. 2d 1174, 1177 (CA3 1985) (generally, relationship between insurer and insured is "solely a matter of contract"); *New Hampshire Ins. Co.* v. *Foxfire, Inc.*, 820 F. Supp. 489, 497 (ND Cal. 1993) (implied covenant of good faith and fair dealing does not create fiduciary relationship between insurer and insured under California law). And state law generally requires that the insurer not discriminate among its policyholders. See, *e. g.*, N. Y. Ins. Law § 4224(a)(1) (McKinney 1985). ERISA, on the other hand, will require insurers to manage what the Court deems plan assets "solely in the interest of the participants and beneficiaries" of the plan, 29 U. S. C. § 1104(a)(1), and will impose a host of other requirements. These conflicting demands will place insurers in a difficult position: "Whenever an insurance company takes actions to ensure that under state law, it is treating its policyholders fairly and equitably, it runs the risk of violating ERISA's fiduciary requirements." *Mack Boring, supra*, at 275, n. 17.

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[5] I agree with the Court that Interpretive Bulletin 75–2's exemption of all general account assets from fiduciary requirements is at odds with the text of § 401(b)(2) and is therefore not entitled to deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837 (1984). Rejecting the Department of Labor's interpretation of the guaranteed benefit policy exception, however, does not require adopting the Court's extreme approach.

Although the Court attempts to limit the fiduciary duty to the free funds—it dubs only the free funds " 'plan assets,' " see *ante*, at 106—the duty it imposes on insurers extends much farther. The free funds are not identifiable assets at all, but are simply an accounting entry in Hancock's books. The amount of the free funds, and hence their "management," *ibid.*, depends on the management of all of the assets in Hancock's Group Pension line of business. See Agreed Statement of Facts ¶ 43, App. 91. To impose fiduciary duties with respect to the management of the free funds is essentially to impose fiduciary duties on the management of the entire line of business. Although insurers in reaction to today's decision may be able to segregate their assets and allocate certain assets to free funds on specific contracts, that will not help insurers like Hancock in this case who now find themselves potentially liable for past actions.[6]

The Court's decision may also significantly disrupt insurers' transactions with companies whose pension plans they fund. The Court's interpretation of § 401(b)(2) will impose on insurers not only general fiduciary duties under 29 U. S. C. § 1104, but also restrictions on prohibited transactions under § 1106. The guaranteed benefit policy exception expressly applies to both. See § 1101(b) (applying subsections (b)(1) and (b)(2) "[f]or purposes of this part," that is, Part 4, which comprises §§ 1101–1114). Indeed, this case concerns alleged violations of both sections. Amended Complaint ¶ 40, App. 58. Among the previously innocent transactions now potentially prohibited will be an insurer's investment in stock issued by any of the employers whose pension plans the insurer funds, a lease of a building owned by the insurer to one of those employers, or the purchase of goods or services from any of those employers. See Hearings on Public Law 93–406 before the Subcommittee on Labor Standards of the House Committee on Education and Labor, 94th Cong., 1st Sess., 390–391 (1975) (testimony of the Assistant Secretary of Labor). Thus, large insurance companies that may have sold policies to thousands of pension plans could suddenly find themselves restricted in contracting with the corresponding thousands of employers whose goods and services they may require. See *id.*, at 391.

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[6] It will be especially difficult for the lower courts in this case to limit application of fiduciary duties to the free funds, as the Court appears to desire, because the pension plan claims that Hancock breached its fiduciary duty by understating the amount of the free funds. See Amended Complaint ¶¶ 29, 30, 40, App. 55–56, 58–60. Thus, it will not be possible to determine the extent of Hancock's fiduciary duty without first ascertaining whether Hancock violated it.

I do not intend to suggest that the Court should give dispositive weight to the practical effects of its decision on the settled expectations of the insurance industry (and its customers, the pension plans, who stand to lose much of the benefit that these contracts presumably offered them). Such considerations are a matter for Congress. But surely the serious and far-reaching effects that today's ruling is likely to have should counsel caution and compel the Court to undertake a closer examination of the terms of the statute to ensure that Congress commanded the result the Court reaches. As discussed in Part I, *supra*, I believe Congress did not mandate that result.

III

Application of the standards I have outlined above to GAC 50, prior to its amendment in 1977 to allow for payment of nonguaranteed benefits, is relatively straightforward. In its pre-1977 form, GAC 50 provided for guaranteed benefits in its entirety. Plan participants would be guaranteed to receive the amount of benefits specified in the contract if the contract was in operation when they retired, regardless of the contract's subsequent termination, App. 137, or any other contingency. Hancock's entire general account, not simply the funds Hancock credited to the pension plan, stood behind that guarantee. Moreover, GAC 50 provided that all investment return remained in a fund allocated exclusively to the payment of guaranteed benefits, and all of the free funds were available to pay such benefits. We therefore are not faced with a contract that uses a pretextual option of guaranteed benefits to disguise an ordinary investment vehicle. Apart from an asset withdrawal mechanism that imposed a significant charge, the contract provided for no other way to use those funds. See 767 F. Supp. 1269, 1274–1275 (SDNY 1991).[7]

Indeed, that is precisely why this litigation arose. Hancock had not squandered the pension plan's funds, as one might expect in the run-of-the-mill breach of fiduciary duty case. The Pension Administration Fund, and thus the free funds, had grown beyond the parties' expectations. The pension plan, however, was unhappy with the bargain it had struck in its contract. By 1977, it had discovered that it could get cheaper guaranteed benefits and a better return on its investment elsewhere, see *id.*, at 1273–1274, but GAC 50 posed several obstacles to moving the uncommitted funds. Terminating the contract would require the plan to "repurchase" annuities for the benefits already guaranteed. The repurchase price set by the contract depends on assumptions concerning the interest rate that would be earned on the funds over the term of the annuity. See Agreed Statement of Facts ¶¶ 33–34, 41, App. 89, 90–91 (2½–3% for benefits vested before 1968; 5% for those vested after 1968).[8] Because those interest rates turned out by the late 1970's to be relatively low compared to prevailing market rates, the contractually determined price for purchasing the annuities was correspondingly high and the pension plan considered the option of terminating the contract to be "prohibitively expensive." Brief for Respondent 5. Withdrawing assets, as already mentioned, entailed a significant asset liquidation adjustment. Therefore, before the 1977 amendment the only other way the free funds could be used was to purchase guaranteed benefits for plan participants. It is difficult to see how a policy that provided for nothing but guaranteed benefits could be said not to provide for such benefits in its entirety.

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[7] GAC 50 made no provision for the rollover mechanism that Hancock allowed the pension plan to use on several occasions to reduce the surplus in the Pension Administration Fund. See 767 F. Supp., at 1274–1275. See also Agreed Statement of Facts ¶ 77, App. 96.

[8] The "artificially low interest rate assumptions," *ante*, at 93, in the contract were last amended in 1968. See Agreed Statement of Facts ¶¶ 105, 111, App. 100, 101. The pension plan alleged that Hancock breached its fiduciary duties by refusing to amend the contract again to take into account changed conditions. Amended Complaint ¶ 40(b), App. 58.

The extent to which GAC 50 "provides for" guaranteed benefits is more complicated, however, because the 1977 amendment discontinued the automatic provision of guaranteed benefits and permitted the payment of "Non-Guaranteed Benefits." See Agreed Statement of Facts ¶¶80, 82, App. 96–97. Proper resolution of this case ultimately depends on the operation and the effect of that amendment. Because the courts below did not discuss its relevance and should be given the opportunity to consider it in the first instance, I would remand.

IV

In the judgment of both the Court and the Second Circuit, to the extent that the contract "'provides no guarantee of benefit payments or fixed rates of return, it seems to us that [Hancock] should be subject to fiduciary responsibility.'" *Ante,* at 104 (quoting 970 F. 2d 1138, 1144 (CA2 1992)). Perhaps it should. But imposing that responsibility disrupts nearly 20 years of settled expectations among the buyers and sellers of group annuity contracts. I do not believe that the statute can be fairly read to command that result. I therefore respectfully dissent.

TENNESSEE *v.* MIDDLEBROOKS

CERTIORARI TO THE SUPREME COURT OF TENNESSEE

No. 92–989. Argued November 1, 1993—Decided December 13, 1993

Certiorari dismissed. Reported below: 840 S. W. 2d 317.

Charles W. Burson, Attorney General of Tennessee, argued the cause for petitioner. With him on the brief was *Kathy Morante Principe.*

David C. Stebbins, by appointment of the Court, 508 U. S. 937, argued the cause for respondent. With him on the brief were *Paul R. Bottei* and *Lionel R. Barrett, Jr.**

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*Briefs of *amici curiae* urging reversal were filed for the State of California et al. by *Daniel E. Lungren*, Attorney General of California, *George Williamson*, Chief Assistant Attorney General, *Dane R. Gillette* and *Ward A. Campbell*, Deputy Attorneys General, and *Mark L. Krotoski*, Special Assistant Attorney General, and by officials for their respective States as follows: *James H. Evans*, Attorney General of Alabama, *Winston Bryant*, Attorney General of Arkansas, *Grant Woods*, Attorney General of Arizona, *John M. Bailey*, Chief State's Attorney of Connecticut, *Charles M. Oberly III*, Attorney General of Delaware, *Robert A. Butterworth*, Attorney General of Florida, *Larry EchoHawk*, Attorney General of Idaho, *Pamela Carter*, Attorney General of Indiana, *Chris Gorman*, Attorney General of Kentucky, *Richard P. Ieyoub*, Attorney General of Louisiana, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Mike Moore*, Attorney General of Mississippi, *Joseph P. Mazurek*, Attorney General of Montana, *Don Stenberg*, Attorney General of Nebraska, *Frankie Sue Del Papa*, Attorney General of Nevada, *Robert J. Del Tufo*, Attorney General of New Jersey, *Michael F. Easley*, Attorney General of North Carolina, *Susan B. Loving*, Attorney General of Oklahoma, *Ernest D. Preate, Jr.*, Attorney General of Pennsylvania, *T. Travis Medlock*, Attorney General of South Carolina, *Mark Barnett*, Attorney General of South Dakota, *Dan Morales*, Attorney General of Texas, and *Joseph B. Meyer*, Attorney General of Wyoming; for the Appellate Committee of the California District Attorney's Association by *Gil Garcetti* and *Harry B. Sondheim;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

JUSTICE BLACKMUN dissents.

OKLAHOMA ET AL. *v.* NEW MEXICO

ON JOINT MOTION FOR ENTRY OF STIPULATED JUDGMENT AND DECREE

No. 109, Orig. Decided June 17, 1991—Judgment and decree entered December 13, 1993

Judgment and decree entered.

Opinion reported: 501 U. S. 221.

The joint motion for entry of stipulated judgment and decree, as modified, is granted.

STIPULATED JUDGMENT, AS MODIFIED

1. New Mexico has been in violation of Article IV(b) of the Canadian River Compact from 1987 to date.

2. Pursuant to Paragraph 8 of the Decree entered in this case, New Mexico shall release from Ute Reservoir in 1993 sufficient water to result in an aggregate of not more than 200,000 acre-feet of conservation storage below Conchas Dam in New Mexico, including conservation storage in the other reservoirs subject to the limitation under Article IV(b) of the Canadian River Compact. The release of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

3. New Mexico shall also release from Ute Reservoir an additional 25,000 acre-feet of storage below the Article IV(b) limitation. New Mexico shall operate Ute Reservoir through the year 2002 at or below the elevations set forth in the schedule below and in accordance with the provisions of Paragraph 8 of the Decree entered in this case. The schedule includes annual adjustments for sediment accumulation in Ute Reservoir and assumes the other reservoirs subject to the Article IV(b) limitation maintain storage at their total capacity of 6,760 acre-feet. The schedule shall be adjusted by the parties to reflect additional amounts of water in conservation storage in any reservoir enlarged or constructed

after 1992. Releases of water from Ute Reservoir will be coordinated with Oklahoma and Texas and will be at the call of Texas.

Ute Reservoir Operating Schedule

	Year	Authorized Elevation	Reduced Storage Amount	Corresponding Reduced Elevation
After release in	1993	3781.58	25,000	3777.86
	1994	3781.66	25,000	3777.95
	1995	3781.74	25,000	3778.04
	1996	3781.83	25,000	3778.14
	1997	3781.91	25,000	3778.23
	1998	3781.99	20,000	3779.08
	1999	3782.08	15,000	3779.91
	2000	3782.16	6,250	3781.28
	2001	3782.24	3,125	3781.80
Refilled in	2002	3782.32	-0-	3782.32

4. Within 75 days after entry of judgment New Mexico shall pay as attorney's fees $200,000 to Texas and $200,000 to Oklahoma. The parties agree that such payments do not constitute and shall not be considered as an admission, express or implicit, that New Mexico has any liability to Texas or Oklahoma for attorney's fees.

5. Oklahoma and Texas shall release New Mexico from all claims for equitable or legal relief, other than the relief embodied in the Decree of the parties, arising out of New Mexico's violation of the Canadian River Compact during the years 1987 through the date this Stipulated Judgment is entered.

6. In the event of a conflict between this Judgment and the Decree entered in this case, the provisions of the Judgment shall control.

7. The costs of this case shall be equally divided among the parties.

DECREE, AS MODIFIED

1. Under Article IV(a) of the Canadian River Compact (Compact), New Mexico is permitted free and unrestricted use of the waters of the Canadian River and its tributaries in New Mexico above Conchas Dam, such use to be made above or at Conchas Dam, including diversions for use on the Tucumcari Project and the Bell Ranch and the on-project storage of return flow or operational waste from those two projects so long as the recaptured water does not include the mainstream or tributary flows of the Canadian River; provided that transfers of water rights from above Conchas Dam to locations below Conchas Dam shall be subject to the conservation storage limitation of Compact Article IV(b). Nothing in this paragraph shall be deemed to determine whether or not the place of use of water rights may be transferred to locations outside the Canadian River basin in New Mexico.

2. Under Compact Article IV(b), New Mexico is limited to storage of no more than 200,000 acre-feet of the waters of the Canadian River and its tributaries, regardless of point of origin, at any time in reservoirs in the Canadian River basin in New Mexico below Conchas Dam for any beneficial use, exclusive of water stored for the exempt purposes specified in Compact Article II(d) and on-project storage of irrigation return flows or operational waste on the Tucumcari Project and Bell Ranch as provided for in Paragraph 1 of this Decree.

3. Quantities of water stored primarily for flood protection, power generation, or sediment control are not chargeable as conservation storage under the Compact even though incidental use is made of such waters for recreation, fish and wildlife, or other beneficial uses not expressly mentioned in the Compact. In situations where storage may be for multiple purposes, including both conservation storage and exempt storage, nothing in this Decree shall preclude the Canadian River Commission (Commission) from exempting

an appropriate portion of such storage from chargeability as conservation storage.

4. Water stored at elevations below a dam's lowest permanent outlet works is not chargeable as conservation storage under the Compact unless the primary use of that storage is for a nonexempt purpose, or unless other means, such as pumps, are utilized to discharge such storage volumes from the reservoir. No change in the location of a dam's lowest permanent outlet works to a higher elevation shall provide the basis for a claim of exempt status for all water stored below the relocated outlet works without prior approval of the Commission, which shall not be unreasonably withheld. Water stored for nonexempt purposes behind a dam with capacity in excess of 100 acre-feet and with no outlet works is chargeable as conservation storage.

5. Future designation or redesignation of storage volumes for flood control, power production, or sediment control purposes must receive prior Commission approval to be exempt from chargeability as conservation storage, which approval shall not be unreasonably withheld.

6. All water stored in Ute Reservoir above elevation 3,725 feet is conservation storage; provided that at such time as the authorization and funding of the Eastern New Mexico Water Supply Project or other project results in changed circumstances at Ute Reservoir, New Mexico may seek exemption of a reasonable portion of such water from the Commission under Paragraph 5 of this Decree and, if an exemption is denied, may petition the Court for appropriate relief under Paragraph 11 of this Decree.

7. In 1988 there were 63 small reservoirs in New Mexico with capacities of 100 acre-feet or less with a total capacity of about 1,000 acre-feet, which the Commission has treated as *de minimis* by waiving storage volume reporting obligations. Water stored in these reservoirs or in similarly sized reservoirs in the future is not chargeable as conservation storage, unless otherwise determined by the Commission.

8. Based on the elevation-capacity relationship of Ute Reservoir effective January 1, 1993, and adjustments pursuant to Paragraph 9 of this Decree, New Mexico shall make and maintain appropriate releases of water from Ute Reservoir or other conservation storage facilities in excess of 100 acre-feet of capacity at the maximum rate consistent with safe operation of such reservoirs so that total conservation storage in the Canadian River basin below Conchas Dam in New Mexico is limited to no more than 200,000 acre-feet at any time; provided that operation of Ute Reservoir for the period 1993–2002 shall be pursuant to the schedule contained in the Judgment entered in this case; and provided that no violation of this paragraph will occur during any period in which the outlet works of Ute Reservoir are discharging water at the maximum safe discharge capacity (currently 350 cubic feet per second) following the first knowledge that the 1993–2002 schedule or the Article IV(b) limitation after 2002 probably would be exceeded; and provided further that Texas shall be notified by New Mexico prior to a release and may allow New Mexico to retain water in conservation storage in excess of the 1993–2002 schedule or the Article IV(b) limitation after 2002, subject to the call of Texas and subject to the provisions of Article V of the Compact. The outlet works of Ute Reservoir shall be maintained in good working order and shall not be modified to reduce the safe discharge capacity without prior approval of the Commission, which shall not be unreasonably withheld.

9. Sediment surveys of Ute Reservoir shall be conducted at least every 10 years by New Mexico, unless such requirement is waived by the Commission. Conservation storage in Ute Reservoir shall be determined from the most recent sediment survey and an annual estimate of the total additional sediment deposition in the reservoir using an annual average of sediment accumulation during the period between 1963 and the most recently completed survey.

10. Nothing in this Decree is intended to affect a State's rights or obligations under the Compact, except as specifically addressed herein.

11. The Court retains jurisdiction of this suit for the purposes of any order, direction, or modification of this Decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy; provided, that any party requesting the Court to exercise its jurisdiction under this paragraph or answering such request shall certify that it has attempted to negotiate in good faith with the other parties in an effort to resolve the dispute sought to be brought before the Court.

BURDEN *v.* ZANT, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92–8836. Decided January 10, 1994

The first time petitioner Burden's habeas petition was before this Court, his case was remanded so that his claim that his pretrial counsel's conflict of interest denied his right to effective assistance of counsel could be considered by the Court of Appeals "free from" that court's erroneous failure to credit a state-court finding that the key prosecution witness was granted immunity while represented by Burden's counsel. 498 U. S. 433. In rejecting his claim a second time, the Court of Appeals held that it did not have to presume the immunity finding's correctness because the state court had not adequately developed the finding. It reasoned that the state court's conclusion amounted to mere personal impression on an issue not subject to significant dispute at trial and stated that the District Court had found that the key witness had not been granted immunity.

Held: The Court of Appeals' decision was based on a manifest error. The District Court did not make the immunity finding as claimed by the Court of Appeals, and the Court of Appeals overlooked evidence strongly supporting Burden's contention regarding an immunity deal. On remand, the Court of Appeals or, subject to its further order, the District Court must determine whether counsel's representation created an actual conflict of interest adversely affecting his performance.

Certiorari granted; 975 F. 2d 771, reversed and remanded.

PER CURIAM.

In *Burden* v. *Zant*, 498 U. S. 433 (1991) *(per curiam)*, we reversed a judgment of the Court of Appeals for the Eleventh Circuit, which had upheld denial of habeas relief on a claim of ineffective assistance of counsel due to conflict of interest. The case is before us again on a petition seeking review of the decision rendered on remand, 975 F. 2d 771 (1992), in which the Court of Appeals once again rejected Burden's claim that he had been deprived of the right to be represented by counsel free of conflict of interest.

In our earlier unanimous *per curiam* opinion, we held that the courts below had failed to accord the presumption of correctness apparently due a state-court determination bearing on the conflict claim (*i. e.*, that Dixon, the key prosecution witness allegedly represented by Burden's pretrial counsel, "'was granted immunity from prosecution,'" 498 U. S., at 436). See 28 U. S. C. § 2254(d). We directed the Court of Appeals on remand to evaluate Burden's conflict-of-interest claim "free from" the "erroneous failure to credit the state trial court's finding . . . ." 498 U. S., at 438.

In the decision now before us, the Eleventh Circuit majority first held that there was no need for a federal habeas court to presume the correctness of the immunity finding, because it had not been "adequately developed" in the state trial court proceeding. See 28 U. S. C. § 2254(d)(3). The majority reasoned that the trial court's conclusion, contained in an administrative report to the State Supreme Court, see Ga. Code Ann. § 17–10–35(a) (1990), and not labeled a finding of fact or conclusion of law, amounted to the trial judge's mere personal "impression" on an issue not subject to significant dispute at trial. See 975 F. 2d, at 774–775. Declaring it "improper" to defer to the judge's "comment," *id.*, at 775, the Court of Appeals explained that it would uphold its prior denial of relief on the basis of a District Court finding, said to be that "Dixon did not testify under a grant of transactional immunity or pursuant to a promise that the State would not prosecute him," *ibid.* In a dissenting opinion, Judge Anderson maintained that the District Court's order contained no such finding and that his colleagues had overlooked the record of evidence strongly supporting Burden's contention that some sort of immunity deal had, in fact, been struck.

Reviewing the record, we are convinced that Judge Anderson was correct, that the decision of the Court of Appeals was grounded on manifest mistake, and that reversal is warranted on that basis alone. We therefore grant the motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari and reverse and remand for the Eleventh Circuit, or subject to its further order the District Court, to determine whether Mr. Kondritzer's representation created "an actual conflict of interest adversely affect[ing] [his] performance." *Cuyler* v. *Sullivan,* 446 U. S. 335, 350 (1980).

Reversed and remanded.

RATZLAF ET UX. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–1196. Argued November 1, 1993—Decided January 11, 1994

As here relevant, federal law requires a domestic bank involved in a cash transaction exceeding $10,000 to file a report with the Secretary of the Treasury, 31 U. S. C. § 5313(a), 31 CFR § 103.22(a); makes it illegal to "structure" a transaction—*i. e.*, to break up a single transaction above the reporting threshold into two or more separate transactions—"for the purpose of evading the reporting requiremen[t]," 31 U. S. C. § 5324(3); and sets out criminal penalties for "[a] person willfully violating" the antistructuring provision, § 5322(a). After the judge at petitioner Waldemar Ratzlaf's trial on charges of violating §§ 5322(a) and 5324(3) instructed the jury that the Government had to prove both that the defendant knew of the § 5313(a) reporting obligation and that he attempted to evade that obligation, but did not have to prove that he knew the structuring in which he engaged was unlawful, Ratzlaf was convicted, fined, and sentenced to prison. In affirming, the Court of Appeals upheld the trial court's construction of the legislation.

Held: To give effect to § 5322(a)'s "willfulness" requirement, the Government must prove that the defendant acted with knowledge that the structuring he or she undertook was unlawful, not simply that the defendant's purpose was to circumvent a bank's reporting obligation. Section 5324 itself forbids structuring with a "purpose of evading the [§ 5313(a)] reporting requirements," and the lower courts erred in treating the "willfulness" requirement essentially as words of no consequence. Viewing §§ 5322(a) and 5324(3) in light of the complex of provisions in which they are embedded, it is significant that the omnibus "willfulness" requirement, when applied to other provisions in the same statutory subchapter, consistently has been read by the Courts of Appeals to require both knowledge of the reporting requirement *and* a specific intent to commit the crime or to disobey the law. The "willfulness" requirement must be construed the same way each time it is called into play. Because currency structuring is not inevitably nefarious, this Court is unpersuaded by the United States' argument that structuring is so obviously "evil" or inherently "bad" that the "willfulness" requirement is satisfied irrespective of the defendant's knowledge of the illegality of structuring. The interpretation adopted in this case does not dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge, for Congress may decree otherwise in particular contexts, and has done so in the present instance. Pp. 140–149.

976 F. 2d 1280, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, and SOUTER, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which REHNQUIST, C. J., and O'CONNOR and THOMAS, JJ., joined, *post*, p. 150.

Stephen Robert LaCheen argued the cause for petitioners. With him on the briefs were *Anne M. Dixon, Peter Goldberger, Pamela A. Wilk, James H. Feldman, Jr., Kevin O'Connell,* and *Christopher H. Kent.*

Paul J. Larkin, Jr., argued the cause for the United States. On the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Bryson, John F. Manning,* and *Richard A. Friedman.**

JUSTICE GINSBURG delivered the opinion of the Court.

Federal law requires banks and other financial institutions to file reports with the Secretary of the Treasury whenever they are involved in a cash transaction that exceeds $10,000. 31 U. S. C. § 5313; 31 CFR § 103.22(a) (1993). It is illegal to "structure" transactions—*i. e.*, to break up a single transaction above the reporting threshold into two or more separate transactions—for the purpose of evading a financial institution's reporting requirement. 31 U. S. C. § 5324. "A person willfully violating" this antistructuring provision is subject to criminal penalties. § 5322. This case presents a question on which Courts of Appeals have divided: Does a defendant's purpose to circumvent a bank's reporting obligation suffice to sustain a conviction for "willfully violating" the antistructuring provision?[1] We hold that the "willfulness" requirement mandates something more. To establish that a defendant "willfully violat[ed]" the antistructuring law, the Government must prove that the defendant acted with knowledge that his conduct was unlawful.

**Alan Zarky* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

[1] Compare, *e. g., United States* v. *Scanio*, 900 F. 2d 485, 491 (CA2 1990) ("proof that the defendant knew that structuring is unlawful" is not re-

I

On the evening of October 20, 1988, defendant-petitioner Waldemar Ratzlaf ran up a debt of $160,000 playing blackjack at the High Sierra Casino in Reno, Nevada. The casino gave him one week to pay. On the due date, Ratzlaf returned to the casino with cash of $100,000 in hand. A casino official informed Ratzlaf that all transactions involving more than $10,000 in cash had to be reported to state and federal authorities. The official added that the casino could accept a cashier's check for the full amount due without triggering any reporting requirement. The casino helpfully placed a limousine at Ratzlaf's disposal, and assigned an employee to accompany him to banks in the vicinity. Informed that banks, too, are required to report cash transactions in excess of $10,000, Ratzlaf purchased cashier's checks, each for less than $10,000 and each from a different bank. He delivered these checks to the High Sierra Casino.

Based on this endeavor, Ratzlaf was charged with "structuring transactions" to evade the banks' obligation to report cash transactions exceeding $10,000; this conduct, the indictment alleged, violated 31 U. S. C. §§5322(a) and 5324(3). The trial judge instructed the jury that the Government had to prove defendant's knowledge of the banks' reporting obligation and his attempt to evade that obligation, but did not

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quired to satisfy §5322's willfulness requirement), with *United States* v. *Aversa*, 984 F. 2d 493, 502 (CA1 1993) (en banc) (a "willful action" within the meaning of §5322(a) "is one committed in violation of a known legal duty or in consequence of a defendant's reckless disregard of such a duty").

have to prove defendant knew the structuring was unlawful. Ratzlaf was convicted, fined, and sentenced to prison.[2]

Ratzlaf maintained on appeal that he could not be convicted of "willfully violating" the antistructuring law solely on the basis of his knowledge that a financial institution must report currency transactions in excess of $10,000 and his intention to avoid such reporting. To gain a conviction for "willful" conduct, he asserted, the Government must prove he was aware of the illegality of the "structuring" in which he engaged. The Ninth Circuit upheld the trial court's construction of the legislation and affirmed Ratzlaf's conviction. 976 F. 2d 1280 (1992). We granted certiorari, 507 U. S. 1050 (1993), and now conclude that, to give effect to the statutory "willfulness" specification, the Government had to prove Ratzlaf knew the structuring he undertook was unlawful. We therefore reverse the judgment of the Court of Appeals.

II

A

Congress enacted the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act) in 1970, Pub. L. 91–2508, Tit. II, 84 Stat. 1118, in response to increasing use of banks and other institutions as financial intermediaries by persons engaged in criminal activity. The Act imposes a variety of reporting requirements on individuals and institutions regarding foreign and domestic financial transactions. See 31 U. S. C. §§ 5311–5325. The reporting requirement relevant here, § 5313(a), applies to domestic financial transactions. Section 5313(a) reads:

> "When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of

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[2] Ratzlaf's wife and the casino employee who escorted Ratzlaf to area banks were codefendants. For convenience, we refer only to Waldemar Ratzlaf in this opinion.

> United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. . . ."[3]

To deter circumvention of this reporting requirement, Congress enacted an antistructuring provision, 31 U. S. C. § 5324, as part of the Money Laundering Control Act of 1986, Pub. L. 99–570, Tit. I, Subtit. H, § 1354(a), 100 Stat. 3207–22.[4] Section 5324,[5] which Ratzlaf is charged with "willfully violating," reads:

> "No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—
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> . . . . .

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[3] By regulation, the Secretary ordered reporting of "transaction[s] in currency of more than $10,000." 31 CFR § 103.22(a) (1993). Although the Secretary could have imposed a report-filing requirement on "any . . . participant in the transaction," 31 U. S. C. § 5313(a), the Secretary chose to require reporting by the financial institution but not by the customer. 31 CFR § 103.22(a) (1993).

[4] Other portions of this Act make "money laundering" itself a crime. See Pub. L. 99–570, Tit. XIII, § 1352(a), 100 Stat. 3207–18, codified at 18 U. S. C. § 1956(a)(2)(b) (prohibiting various transactions involving the "proceeds of some form of unlawful activity"). The Government does not assert that Ratzlaf obtained the cash used in any of the transactions relevant here in other than a lawful manner.

[5] Subsequent to Ratzlaf's conviction, Congress recodified § 5324(1)–(3) as § 5324(a)(1)–(3), without substantive change. In addition, Congress added subsection (b) to replicate the prohibitions of subsection (a) in the context of international currency transactions. See Annunzio-Wylie Anti-Money Laundering Act, Pub. L. 102–550, Tit. XV, § 1525(a), 106 Stat. 4064, 31 U. S. C. § 5324 (1988 ed., Supp. IV). For simplicity, we refer to the codification in effect at the time the Court of Appeals decided this case.

> "(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions."[6]

The criminal enforcement provision at issue, 31 U. S. C. § 5322(a), sets out penalties for "[a] person willfully violating," *inter alia*, the antistructuring provision. Section 5322(a) reads:

> "A person willfully violating this subchapter [31 U. S. C. § 5311 *et seq.*] or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or [imprisoned for] not more than five years, or both."

B

Section 5324 forbids structuring transactions with a "purpose of evading the reporting requirements of section 5313(a)." Ratzlaf admits that he structured cash transactions, and that he did so with knowledge of, and a purpose to avoid, the banks' duty to report currency transactions in excess of $10,000. The statutory formulation (§ 5322) under which Ratzlaf was prosecuted, however, calls for proof of "willful[ness]" on the actor's part. The trial judge in Ratzlaf's case, with the Ninth Circuit's approbation, treated § 5322(a)'s "willfulness" requirement essentially as surplusage—as words of no consequence.[7] Judges should hesitate so to treat statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense. See *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 562 (1990) (expressing "deep reluctance" to interpret statutory provisions "so as to render superfluous other provisions in the same enactment") (citation omitted); cf. *Potter* v. *United States*, 155 U. S. 438, 446 (1894) (word "wilful" used to describe certain offenses but not others in same statute "cannot be regarded as mere surplusage; it means something").

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[6] Regarding enforcement of § 5324, the Secretary considered, but did not promulgate, a regulation requiring banks to inform currency transaction customers of the section's proscription. See 53 Fed. Reg. 7948 (1988) (proposing "procedures to notify [bank] customers of the provisions to Section 5324" in order to "insure compliance" with those provisions); 54 Fed. Reg. 20398 (1989) (withdrawing proposal).

[7] The United States confirmed at oral argument that, in its view, as in the view of the courts below, "the 5324 offense is just what it would be if you never had 5322." Tr. of Oral Arg. 23.

"Willful," this Court has recognized, is a "word of many meanings," and "its construction [is] often . . . influenced by its context." *Spies* v. *United States*, 317 U. S. 492, 497 (1943). Accordingly, we view §§ 5322(a) and 5324(3) mindful of the complex of provisions in which they are embedded. In this light, we count it significant that § 5322(a)'s omnibus "willfulness" requirement, when applied to other provisions in the same subchapter, consistently has been read by the Courts of Appeals to require both "knowledge of the reporting requirement" *and* a "specific intent to commit the crime," *i. e.*, "a purpose to disobey the law." See *United States* v. *Bank of New England, N. A.*, 821 F. 2d 844, 854–859 (CA1 1987) ("willful violation" of § 5313's reporting requirement for cash transactions over $10,000 requires "voluntary, intentional, and bad purpose to disobey the law"); *United States* v. *Eisenstein*, 731 F. 2d 1540, 1543 (CA11 1984) ("willful violation" of § 5313's reporting requirement for cash transactions over $10,000 requires " 'proof of the defendant's knowledge of the reporting requirement and his specific intent to commit the crime' ") (quoting *United States* v. *Granda*, 565 F. 2d 922, 926 (CA5 1978)).

Notable in this regard are 31 U. S. C. § 5314,[8] concerning records and reports on monetary transactions with foreign financial agencies, and § 5316,[9] concerning declaration of the transportation of more than $10,000 into, or out of, the United States. Decisions involving these provisions describe a "willful" actor as one who violates "a known legal duty." See, *e. g.*, *United States* v. *Sturman*, 951 F. 2d 1466, 1476–1477 (CA6 1991) ("willful violation" of § 5314's reporting requirement for foreign financial transactions requires proof of "'voluntary, intentional violation of a known legal duty'") (quoting *Cheek* v. *United States*, 498 U. S. 192, 201 (1991)); *United States* v. *Warren*, 612 F. 2d 887, 890 (CA5 1980) ("willful violation" of § 5316's reporting requirement for transportation of currency across international boundaries requires that defendant "have *actually known* of the currency reporting requirement and have voluntarily and intentionally violated that known legal duty"); *United States* v. *Dichne*, 612 F. 2d 632, 636 (CA2 1979) ("willful violation" of § 5316's reporting requirement for transportation of currency across international boundaries requires proof of defendant's "'knowledge of the reporting requirement and his specific intent to commit the crime'") (quoting *Granda*, 565 F. 2d, at 926); *Granda*, 565 F. 2d, at 924–926 (overturning conviction for "willful violation" of § 5316 because jury was not given "proper instruction [that] would include some discussion of defendant's ignorance of the law" and rejecting Government's contention that the statutory provisions "do not require that the defendant be aware of the fact that he is breaking the law").[10]

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[8] Section 5314 provides that "the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency."

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[9] Section 5316 requires the filing of reports prescribed by the Secretary of the Treasury when "a person or an agent or bailee of the person . . . knowingly (1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time" into, or out of, the United States.

[10] "[S]pecific intent to commit the crime[s]" described in 31 U. S. C. §§ 5313, 5314, and 5316 might be negated by, *e. g.*, proof that defendant relied in good faith on advice of counsel. See *United States* v. *Eisenstein*, 731 F. 2d 1540, 1543–1544 (CA11 1984).

A term appearing in several places in a statutory text is generally read the same way each time it appears. See *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 479 (1992). We have even stronger cause to construe a *single* formulation, here §5322(a), the same way each time it is called into play. See *United States* v. *Aversa*, 984 F. 2d 493, 498 (CA1 1993) (en banc) ("Ascribing various meanings to a single iteration of [§5322(a)'s willfulness requirement]—reading the word differently for each code section to which it applies—would open Pandora's jar. If courts can render meaning so malleable, the usefulness of a single penalty provision for a group of related code sections will be eviscerated and . . . almost any code section that references a group of other code sections would become susceptible to individuated interpretation.").

The United States urges, however, that §5324 violators, by their very conduct, exhibit a purpose to do wrong, which suffices to show "willfulness":

> "On occasion, criminal statutes—including some requiring proof of 'willfulness'—have been understood to require proof of an intentional violation of a known legal duty, *i. e.*, specific knowledge by the defendant that his conduct is unlawful. But where that construction has been adopted, it has been invoked only to ensure that the defendant acted with a wrongful purpose. See *Liparota* v. *United States*, 471 U. S. 419, 426 (1985) . . . .
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> . . . . .
>
> "The anti-structuring statute, 31 U. S. C. §5324, satisfies the 'bad purpose' component of willfulness by explicitly defining the wrongful purpose necessary to violate the law: it requires proof that the defendant acted with the purpose to evade the reporting requirement of Section 5313(a)." Brief for United States 23–25.

"'[S]tructuring is not the kind of activity that an ordinary person would engage in innocently,'" the United States asserts. *Id.*, at 29 (quoting *United States* v. *Hoyland,* 914 F. 2d 1125, 1129 (CA9 1990)). It is therefore "reasonable," the Government concludes, "to hold a structurer responsible for evading the reporting requirements without the need to prove specific knowledge that such evasion is unlawful." Brief for United States 29.

Undoubtedly there are bad men who attempt to elude official reporting requirements in order to hide from Government inspectors such criminal activity as laundering drug money or tax evasion.[11] But currency structuring is not inevitably nefarious. Consider, for example, the small business operator who knows that reports filed under 31 U. S. C. § 5313(a) are available to the Internal Revenue Service. To reduce the risk of an IRS audit, she brings $9,500 in cash to the bank twice each week, in lieu of transporting over $10,000 once each week. That person, if the United States is right, has committed a criminal offense, because she structured cash transactions "for the specific purpose of depriving the Government of the information that Section 5313(a) is designed to obtain." Brief for United States 28–

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[11] On brief, the United States attempted to link Ratzlaf to other bad conduct, describing at some length his repeated failure to report gambling income in his income tax returns. Brief for United States 5–7. Ratzlaf was not prosecuted, however, for these alleged misdeeds. Tr. of Oral Arg. 35–36. Nor has the Government ever asserted that Ratzlaf was engaged in other conduct Congress sought principally to check through the legislation in question—not gambling at licensed casinos, but laundering money proceeds from drug sales or other criminal ventures. See S. Rep. No. 99–433, pp. 1–2 (1986) (purpose of Act creating § 5324 is to "provide Federal law enforcement agencies with additional tools to investigate money laundering [and to] curb the spread of money laundering, by which criminals have successfully disguised the nature and source of funds from their illegal enterprises").

29.[12] Nor is a person who structures a currency transaction invariably motivated by a desire to keep the Government in the dark. But under the Government's construction an individual would commit a felony against the United States by making cash deposits in small doses, fearful that the bank's reports would increase the likelihood of burglary,[13] or in an endeavor to keep a former spouse unaware of his wealth.[14]

Courts have noted "many occasions" on which persons, without violating any law, may structure transactions "in order to avoid the impact of some regulation or tax." *United States* v. *Aversa,* 762 F. Supp. 441, 446 (NH 1991), aff'd in part, 984 F. 2d 493 (CA1 1993). This Court, over a century ago, supplied an illustration:

> "The Stamp Act of 1862 imposed a duty of two cents upon a bank-check, when drawn for an amount not less than twenty dollars. A careful individual, having the amount of twenty dollars to pay, pays the same by handing to his creditor two checks of ten dollars each. He thus draws checks in payment of his debt to the amount

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[12] At oral argument, the United States recognized that, under its reading of the legislation, the entrepreneur in this example, absent special exemption, would be subject to prosecution. Tr. of Oral Arg. 32–34.

[13] See *United States* v. *Dollar Bank Money Market Account No. 1591768456,* 980 F. 2d 233, 241 (CA3 1992) (forfeiture action under 18 U. S. C. §981(a)(1)(A) involving a cash gift deposited by the donee in several steps to avoid bank's reporting requirement; court overturned grant of summary judgment in Government's favor, noting that jury could believe donee's "legitimate explanations for organizing his deposits in amounts under $10,000," including respect for donor's privacy and fear that information regarding the donor—an "eccentric old woman [who] hid hundreds of thousands of dollars in her house"—might lead to burglary attempts).

[14] See *Aversa,* 984 F. 2d, at 495 (real estate partners feared that "paper trail" from currency transaction reports would obviate efforts to hide existence of cash from spouse of one of the partners).

> of twenty dollars, and yet pays no stamp duty. . . . While his operations deprive the government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud. He resorts to devices to avoid the payment of duties, but they are not illegal. He has the legal right to split up his evidences of payment, and thus to avoid the tax." *United States* v. *Isham,* 17 Wall. 496, 506 (1873).

In current days, as an *amicus* noted, countless taxpayers each year give a gift of $10,000 on December 31 and an identical gift the next day, thereby legitimately avoiding the taxable gifts reporting required by 26 U. S. C. § 2503(b).[15] See Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 16.

In light of these examples, we are unpersuaded by the argument that structuring is so obviously "evil" or inherently "bad" that the "willfulness" requirement is satisfied irrespective of the defendant's knowledge of the illegality of structuring. Had Congress wished to dispense with the requirement, it could have furnished the appropriate instruction.[16]

C

In § 5322, Congress subjected to criminal penalties only those "willfully violating" § 5324, signaling its intent to require for conviction proof that the defendant knew not only of the bank's duty to report cash transactions in excess of $10,000, but also of his duty not to avoid triggering such a report. There are, we recognize, contrary indications in the statute's legislative history.[17] But we do not resort to legislative history to cloud a statutory text that is clear.[18] Moreover, were we to find § 5322(a)'s "willfulness" requirement ambiguous as applied to § 5324, we would resolve any doubt in favor of the defendant. *Hughey* v. *United States*, 495 U. S. 411, 422 (1990) (lenity principles "demand resolution of ambiguities in criminal statutes in favor of the defendant"); *Crandon* v. *United States*, 494 U. S. 152, 160 (1990) ("Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text."); *United States* v. *Bass*, 404 U. S. 336, 347–350 (1971) (rule of lenity premised on concepts that " 'fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed' " and that "legislatures and not courts should define

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[15] The statute provides that "[i]n the case of gifts . . . made to any person by [a] donor during [a] calendar year, the first $10,000 of such gifts to such person shall not . . . be included in the total amount of gifts made during such year." 26 U. S. C. § 2503(b).

[16] Congress did provide for civil forfeiture without any "willfulness" requirement in the Money Laundering Control Act of 1986. See 18 U. S. C. § 981(a) (subjecting to forfeiture "[a]ny property, real or personal, involved in a transaction . . . in violation of section 5313(a) or 5324(a) of title 31 . . ."); see also 31 U. S. C. § 5317(a) (subjecting to forfeiture any "monetary instrument . . . being transported [when] a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement").

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[17] The United States points to one of the Senate Reports accompanying the Money Laundering Control Act of 1986, which stated that "a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability." S. Rep. No. 99–433, p. 22 (1986), cited in Brief for United States 35. The same Report also indicated that § 5324 "would codify [*United States* v.] *Tobon-Builes*[, 706 F. 2d 1092 (CA11 1983),] and like cases [by] expressly subject[ing] to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact." S. Rep. No. 99–433, at 22, cited in Brief for United States 33.

But the legislative history cited by the United States is hardly crystalline. The reference to *United States* v. *Tobon-Builes*, 706 F. 2d 1092 (CA11 1983), is illustrative. In that case, the defendant was charged under 18 U. S. C. § 1001, the False Statements Act, with "conceal[ing] . . . the existence, source, and transfer of approximately $185,200 in cash by purchasing approximately twenty-one cashier's checks in amounts less than $10,000 [and] using a variety of names, including false names . . . ." 706 F. 2d, at 1094. The defendant's "main contention," rejected by the Eleventh Circuit, was that he "could not have violated the concealment prohibition of § 1001 because he was under no legal duty to report any of his cash transactions." *Id.*, at 1096. No "ignorance of the law" defense was asserted. Congress may indeed have "codified" that decision in § 5324 by "expressly subject[ing] to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact," S. Rep. No. 99–433, at 22, but it appears that Congress did so in the *first* and *second* subsections of § 5324, which track the Senate Report language almost verbatim. See 31 U. S. C. § 5324(1) (no person shall "cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a)"); 31 U. S. C. § 5324(2) (no person shall "cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact"). Indeed, the Senate Report stated that "*[i]n addition*" to codifying *Tobon-Builes*, § 5324

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would also "create the offense of structuring a transaction to evade the reporting requirements." S. Rep. No. 99–433, at 22. The relevance of *Tobon-Builes* to the proper construction of § 5324(3), the subsection under which Ratzlaf was convicted, is not evident.

[18] See *Barnhill* v. *Johnson*, 503 U. S. 393, 401 (1992) (appeals to legislative history are well taken only to resolve statutory ambiguity). See also *United States* v. *Aversa*, 984 F. 2d, at 499, n. 8 (commenting that legislative history of provisions here at issue " 'is more conflicting than the [statutory] text is ambiguous' ") (quoting *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 49 (1950)). As the First Circuit noted, no House, Senate, or Conference Report accompanied the final version of the Anti-Drug Abuse Act of 1986; instead, over 20 separate reports accompanied various proposed bills, portions of which were incorporated into that Act. See 1986 U. S. C. C. A. N. 5393 (listing reports).

The dissent, see *post*, at 161, features a House Report issued in 1991 in connection with an unenacted version of the Annunzio-Wylie Anti-Money Laundering Act. We do not find that Report, commenting on a bill that did not pass, a secure indicator of congressional intent at any time, and it surely affords no reliable guide to Congress' intent in 1986. See *Oscar Mayer & Co.* v. *Evans*, 441 U. S. 750, 758 (1979) (cautioning against giving weight to "history" written years after the passage of a statute).

criminal activity") (quoting *McBoyle* v. *United States,* 283 U. S. 25, 27 (1931) (Holmes, J.)).

We do not dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge. See *Cheek* v. *United States,* 498 U. S. 192, 199 (1991); *Barlow* v. *United States,* 7 Pet. 404, 410–412 (1833) (Story, J.). In particular contexts, however, Congress may decree otherwise. That, we hold, is what Congress has done with respect to 31 U. S. C. § 5322(a) and the provisions it controls. To convict Ratzlaf of the crime with which he was charged, violation of 31 U. S. C. §§ 5322(a) and 5324(3), the jury had to find he knew the structuring in which he engaged was unlawful.[19] Because the jury was not properly instructed in this regard, we reverse the judgment of the Ninth Circuit and remand this case for further proceedings consistent with this opinion.

It is so ordered.

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[19] The dissent asserts that our holding "largely nullifies the effect" of § 5324 by "mak[ing] prosecution for structuring difficult or impossible in most cases." See *post,* at 161, 162. Even under the dissent's reading of the statute, proof that the defendant knew of the bank's duty to report is required for conviction; we fail to see why proof that the defendant knew of his duty to refrain from structuring is so qualitatively different that it renders prosecution "impossible." A jury may, of course, find the requisite knowledge on defendant's part by drawing reasonable inferences from the evidence of defendant's conduct, see *Spies* v. *United States,* 317 U. S. 492, 499–500 (1943) (illustrating conduct that can support permissible inference of an "affirmative willful attempt" to evade a tax); *United States* v. *Bank of New England, N. A.,* 821 F. 2d 844, 854 (CA1 1987) (willfulness "is usually established by drawing reasonable inferences from the available facts"), and the Government has not found it "impossible" to persuade a jury to make such inferences in prosecutions for willful violations of §§ 5313, 5314, or 5316. See, *e. g., United States* v. *Dichne,* 612 F. 2d 632, 636–638 (CA2 1979) (evidence that Government took "affirmative steps" to bring the reporting requirement to the defendant's attention by means of visual notices supports inference that defendant "willfully violated" § 5316).

JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE THOMAS join, dissenting.

On October 27, 1988, petitioner Waldemar Ratzlaf[1] arrived at a Nevada casino with a shopping bag full of cash to pay off a $160,000 gambling debt. He told casino personnel he did not want any written report of the payment to be made. The casino vice president informed Ratzlaf that he could not accept a cash payment of more than $10,000 without filing a report.

Ratzlaf, along with his wife and a casino employee, then proceeded to visit several banks in and around Stateline, Nevada, and South Lake Tahoe, California, purchasing separate cashier's checks, each in the amount of $9,500. At some banks the Ratzlafs attempted to buy two checks—one for each of them—and were told that a report would have to be filed; on those occasions they canceled the transactions. Ratzlaf then returned to the casino and paid off $76,000 of his debt in cashier's checks. A few weeks later, Ratzlaf gave three persons cash to purchase additional cashier's checks in amounts less than $10,000. The Ratzlafs themselves also bought five more such checks in the course of a week.

A jury found beyond a reasonable doubt that Ratzlaf knew of the financial institutions' duty to report cash transactions in excess of $10,000 and that he structured transactions for the specific purpose of evading the reporting requirements.

The Court today, however, concludes that these findings are insufficient for a conviction under 31 U. S. C. §§ 5322(a) and 5324(3),[2] because a defendant also must have known that the structuring in which he engaged was illegal. Because this conclusion lacks support in the text of the statute, conflicts in my view with basic principles governing the interpretation of criminal statutes, and is squarely undermined by the evidence of congressional intent, I dissent.

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[1] For convenience, I follow the majority, see *ante*, at 138, n. 2, and refer only to Waldemar Ratzlaf in this opinion.

[2] As does the majority, I refer to the codification in effect at the time the Court of Appeals decided this case. See *ante*, at 139, n. 5.

I

"The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system." *Cheek* v. *United States*, 498 U. S. 192, 199 (1991). The Court has applied this common-law rule "in numerous cases construing criminal statutes." *Ibid.*, citing *United States* v. *International Minerals & Chemical Corp.*, 402 U. S. 558 (1971); *Hamling* v. *United States*, 418 U. S. 87, 119–124 (1974); and *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337 (1952).

Thus, the term "willfully" in criminal law generally "refers to consciousness of the act but not to consciousness that the act is unlawful." *Cheek*, 498 U. S., at 209 (SCALIA, J., concurring in judgment); see also *Browder* v. *United States*, 312 U. S. 335, 341 (1941); *Potter* v. *United States*, 155 U. S. 438, 446 (1894); *American Surety Co. of New York* v. *Sullivan*, 7 F. 2d 605, 606 (CA2 1925) (L. Hand, J.) ("[T]he word 'willful' . . . means no more than that the person charged with the duty knows what he is doing," not that "he must suppose that he is breaking the law"); American Law Institute, Model Penal Code § 2.02(8) (1985) ("A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears").

As the majority explains, 31 U. S. C. § 5322(a), originally enacted in 1970, imposes criminal penalties upon "person[s] willfully violating this subchapter." The subchapter (entitled "Records and Reports on Monetary Instruments Transactions") contains several different reporting requirements, including § 5313, which requires financial institutions to file reports for cash transactions over an amount prescribed by regulation; § 5314, which requires reports for transactions with foreign financial agencies; and § 5316, which requires reports for transportation of more than $10,000 into or out of the United States. In 1986, Congress added § 5324 to the subchapter to deter rampant evasion by customers of financial institutions' duty to report large cash transactions. See *infra,* at 162, and n. 13. The new section provides: "No person shall for the purpose of evading the reporting requirements of section 5313(a) . . . (3) structure . . . any transaction with one or more domestic financial institutions."

Unlike other provisions of the subchapter, the antistructuring provision identifies the purpose that is required for a § 5324 violation: "evading the reporting requirements." The offense of structuring, therefore, requires (1) *knowledge* of a financial institution's reporting requirements, and (2) the structuring of a transaction for the *purpose* of evading those requirements. These elements define a violation that is "willful" as that term is commonly interpreted. The majority's additional requirement that an actor have actual knowledge *that structuring is prohibited* strays from the statutory text, as well as from our precedents interpreting criminal statutes generally and "willfulness" in particular.

The Court reasons that the interpretation of the Court of Appeals for the Ninth Circuit, and that of nine other Circuits,[3] renders § 5322(a)'s willfulness requirement superfluous. See *ante,* at 140. This argument ignores the generality of § 5322(a), which sets a single standard—willfulness—for the subchapter's various reporting provisions. Some of those provisions do not themselves define willful conduct, so the willfulness element cannot be deemed surplusage. Moreover, the fact that § 5322(a) requires willfulness for criminal liability to be imposed does not mean that each of the underlying offenses to which it applies must involve something less than willfulness. Thus, the fact that § 5324 *does* describe a "willful" offense, since it already requires "the purpose of evading the reporting requirements," provides no basis for imposing an artificially heightened scienter requirement.

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[3] See *United States* v. *Scanio,* 900 F. 2d 485, 489–492 (CA2 1990); *United States* v. *Shirk,* 981 F. 2d 1382, 1389–1392 (CA3 1993); *United States* v. *Rogers,* 962 F. 2d 342, 343–345 (CA4 1992); *United States* v. *Beaumont,* 972 F. 2d 91, 93–95 (CA5 1992); *United States* v. *Baydoun,* 984 F. 2d 175, 180 (CA6 1993); *United States* v. *Jackson,* 983 F. 2d 757, 767 (CA7 1993); *United States* v. *Gibbons,* 968 F. 2d 639, 643–645 (CA8 1992); *United States* v. *Dashney,* 937 F. 2d 532, 537–540 (CA10), cert. denied, 502 U. S. 951 (1991); *United States* v. *Brown,* 954 F. 2d 1563, 1567–1569 (CA11), cert. denied, 506 U. S. 900 (1992).

The only Court of Appeals to adopt a contrary interpretation is the First Circuit, and even that court allows "reckless disregard" of one's legal duty to support a conviction for structuring. See *United States* v. *Aversa,* 984 F. 2d 493, 502 (1993) (en banc).

The majority also contends that § 5322(a)'s willfulness element, when applied to the subchapter's other provisions, has been read by the Courts of Appeals to require knowledge of and a purpose to disobey the law. See *ante*, at 141–142. In fact, the cases to which the majority refers stand for the more subtle proposition that a willful violation requires knowledge of the pertinent reporting requirements and a purpose to avoid compliance with them.[4] Consistent with and in light of that construction, Congress' 1986 enactment prohibited structuring "for the purpose of evading the reporting requirements." The level of knowledge imposed by the term "willfully" as it applies to all the underlying offenses in the subchapter on reporting requirements is "knowledge of the reporting requirements."[5]

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[4] The dominant formulation of the standard for a willful violation of the related provisions demands "proof of the defendant's knowledge of the reporting requirement and his specific intent to commit the crime." *United States* v. *Granda*, 565 F. 2d 922, 926 (CA5 1978); see also *United States* v. *Bank of New England, N. A.*, 821 F. 2d 844, 854 (CA1) ("willful" violation of § 5313 requires "'knowledge of the reporting requirements and [defendant's] specific intent to commit the crime'"), cert. denied, 484 U. S. 943 (1987); *United States* v. *Eisenstein*, 731 F. 2d 1540, 1543 (CA11 1984) (same); *United States* v. *Dichne*, 612 F. 2d 632, 636 (CA2 1979) (same standard under predecessor to § 5316), cert. denied, 445 U. S. 928 (1980); *United States* v. *Schnaiderman*, 568 F. 2d 1208, 1211 (CA5 1978) (same). The term "specific intent" does not, as the majority appears to assume, import the notion of knowledge of illegality. Rather, that term generally corresponds to the concept of "purpose," see *United States* v. *Bailey*, 444 U. S. 394, 405 (1980), and it does not add to the requisite *knowledge*, which is specified in the first prong of the standard. The majority correctly notes that courts in a few instances have referred to a willful violation of the reporting provisions as involving violation of a "known legal duty." Those courts, however, either applied the standard from *Cheek* v. *United*

The Court next concludes that its interpretation of "willfully" is warranted because structuring is not inherently "nefarious." See *ante*, at 144. It is true that the Court, on occasion, has imposed a knowledge-of-illegality requirement upon criminal statutes to ensure that the defendant acted with a wrongful purpose. See, *e. g., Liparota* v. *United*

States, 498 U. S. 192, 200 (1991), despite this Court's restriction of that standard's application to the tax context, see *United States* v. *Sturman*, 951 F. 2d 1466, 1476 (CA6 1991), or were referring simply to the reporting requirements as the "law" that one must know and actually applied the dominant standard from *Granda*, see *Bank of New England*, 821 F. 2d, at 854; *United States* v. *Warren*, 612 F. 2d 887, 890 (CA5 1980). This understanding is supported by *Granda*'s statement that "the proper instruction would include some discussion of the defendant's ignorance of the law since the defendant's alleged *ignorance of the reporting requirements* goes to the heart of his or her denial of the specific intent necessary to commit the crime." 565 F. 2d, at 926 (emphasis added).

[5] "Knowledge of the reporting requirements" is easily confused with "knowledge of illegality" because, in the context of the other reporting provisions—§§ 5313, 5314, and 5316—the entity that can "willfully violate" each provision is also the entity charged with the reporting duty; as a result, a violation with "knowledge of the reporting requirements" necessarily entails the entity's knowledge of the illegality of its conduct (that is, its failure to file a required report). In contrast, § 5324 prohibits a customer from purposefully evading a *bank's* reporting requirements, so knowledge of the reporting requirements does not collapse into actual knowledge that the customer's own conduct is prohibited. Under the cases interpreting the statute as well as fundamental principles of criminal law, it is one's knowledge of the reporting requirements, not "knowledge of the illegality of one's conduct," that makes a violation "willful." Moreover, as explained below, Congress in 1992 rejected the majority's construction when it enacted a parallel antistructuring provision for attempts to evade § 5316's reporting requirements. See *infra*, at 161–162.

States, 471 U. S. 419, 426 (1985). I cannot agree, however, that the imposition of such a requirement is necessary here. First, the conduct at issue—splitting up transactions involving tens of thousands of dollars in cash for the specific purpose of circumventing a bank's reporting duty—is hardly the sort of innocuous activity involved in cases such as *Liparota,* in which the defendant had been convicted of fraud for purchasing food stamps for less than their face value. Further, an individual convicted of structuring is, by definition, aware that cash transactions are regulated, and he cannot seriously argue that he lacked notice of the law's intrusion into the particular sphere of activity. Cf. *Lambert* v. *California,* 355 U. S. 225, 229 (1957). By requiring knowledge of a bank's reporting requirements as well as a "purpose of evading" those requirements, the antistructuring provision targets those who knowingly act to deprive the Government of information to which it is entitled. In my view, that is not so plainly innocent a purpose as to justify reading into the statute the additional element of knowledge of illegality.[6] In any event, Congress has determined that purposefully structuring transactions is not innocent conduct.[7]

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[6] The question is not whether structuring is "so obviously 'evil' or inherently 'bad' that the 'willfulness' requirement is satisfied irrespective of the defendant's knowledge of the illegality of structuring." *Ante,* at 146. The general rule is that "willfulness" does *not* require knowledge of illegality; the inquiry under exceptional cases such as *Liparota* v. *United States,* 471 U. S. 419 (1985), is whether the statute criminalizes "a broad range of apparently innocent conduct," *id.,* at 426, such that it requires no element of wrongfulness.

The majority expresses concern about the potential application of the antistructuring law to a business operator who deposits cash twice each week to reduce the risk of an IRS audit. See *ante,* at 144–145. First, it is not at all clear that the statute would apply in this situation. If a person has legitimate business reasons for conducting frequent cash transactions, or if the transactions genuinely can be characterized as separate, rather than artificially structured, then the person is not engaged in "structuring" for the purpose of "evasion." See *United States* v. *Brown,* 954 F. 2d, at 1571; S. Rep. No. 99–433, p. 22 (1986). Even if application of § 5324 were theoretically possible in this extreme situation, the example would not establish prohibition of a "broad range of apparently innocent conduct"

In interpreting federal criminal tax statutes, this Court has defined the term "willfully" as requiring the "'voluntary, intentional violation of a known legal duty.'" *Cheek* v. *United States*, 498 U. S., at 200, quoting *United States* v. *Bishop*, 412 U. S. 346, 360 (1973); see also *United States* v. *Murdock*, 290 U. S. 389, 394–396 (1933). Our rule in the tax area, however, is an "exception to the traditional rule," applied "largely due to the complexity of the tax laws." *Cheek*, 498 U. S., at 200; see also *Browder* v. *United States*, 312 U. S., at 341–342. The rule is inapplicable here, where, far from being complex, the provisions involved are perhaps among the simplest in the United States Code.[8]

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as in *Liparota*, 471 U. S., at 426, and it would not justify reading into the statute a knowledge-of-illegality requirement.

[7] "[The antistructuring provision] requires proof beyond a reasonable doubt that the purpose of the 'structured' aspect of a currency exchange was to evade the reporting requirements of the Bank Secrecy Act. It is this requirement which shields innocent conduct from prosecution." Hearing on S. 571 and S. 2306 before the Senate Committee on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess., 136–137 (1986) (response of Deputy Asst. Atty. Gen. Knapp and Asst. U. S. Atty. Sun to written question of Sen. D'Amato).

[8] The majority offers examples of tax "avoidance" as further evidence of the apparent "innocence" of structuring transactions to evade the reporting requirements. See *ante*, at 145–146. These examples are inapposite because Congress specifically has prohibited the structuring of transactions to evade the reporting requirements. Indeed, its use of the word "evading" in § 5324 reveals that Congress deemed the intent to circumvent those requirements a "bad purpose." Moreover, the analogy to the tax field is flawed. Tax law involves a unique scheme consisting of myriad categories and thresholds, applied in yearly segments, designed to generate appropriate levels of taxation while also influencing behavior in various ways. Innocent "avoidance" is an established part of this scheme, and it does not operate to undermine the purposes of the tax law. In sharp contrast, evasion of the currency transaction reporting requirements completely deprives the Government of the information that those requirements are designed to obtain, and thus wholly undermines the purpose of the statute.

II

Although I believe the statutory language is clear in light of our precedents, the legislative history confirms that Congress intended to require knowledge of (and a purpose to evade) the reporting requirements but not specific knowledge of the illegality of structuring.[9]

Before 1986, the reporting requirements included no provision explicitly prohibiting the structuring of transactions to evade the reporting requirements. The Government attempted to combat purposeful evasion of the reporting requirements through 18 U. S. C. § 1001, which applies to anyone who "knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact" within the jurisdiction of a federal agency, and 18 U. S. C. § 2(b), which applies to anyone who "willfully causes an act to be done which if directly performed by him or another would be an offense" under federal law. Some Courts of Appeals upheld application of those criminal statutes where a report would have been filed but for the defendant's purposeful structuring. See, *e. g., United States* v. *Tobon-Builes,* 706 F. 2d 1092, 1096–1101 (CA11 1983); *United States* v. *Heyman,* 794 F. 2d 788, 790–793 (CA2), cert. denied, 479 U. S. 989 (1986). As the leading case explained, a defendant's willfulness was established if he "knew about the currency reporting requirements and . . . purposely sought to prevent the financial institutions from filing required reports . . . by structuring his transactions as multiple smaller transactions under $10,000." *Tobon-Builes,* 706 F. 2d, at 1101.

Other courts rejected imposition of criminal liability for structuring under §§ 1001 and 2(b), concluding either that the law did not impose a duty not to structure or that criminal liability was confined to limited forms of structuring. See, *e. g., United States* v. *Varbel,* 780 F. 2d 758, 760–763 (CA9 1986); *United States* v. *Denemark,* 779 F. 2d 1559, 1561–1564 (CA11 1986); *United States* v. *Anzalone,* 766 F. 2d 676, 679–683 (CA1 1985).

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[9] Because the statutory language unambiguously imposes no requirement of knowledge of the illegality of structuring, I would not apply the rule of lenity. Moreover, I am not persuaded that that rule should be applied to defeat a congressional purpose that is as clear as that evidenced here. See *Liparota,* 471 U. S., at 427; *United States* v. *Bramblett,* 348 U. S. 503, 509–510 (1955).

Congress enacted the antistructuring provision in 1986 "to fill a loophole in the Bank Secrecy Act caused by" the latter three decisions, which "refused to apply the sanctions of [the Act] to transactions 'structured' to evade the act's $10,000 cash reporting requirement." S. Rep. No. 99–433, p. 7 (1986). As explained by the Report of the Senate Judiciary Committee:

> "[The antistructuring provision] would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone, Varbel* and *Denemark.* It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act." *Id.,* at 22.

See also H. R. Rep. No. 99–746, pp. 18–19, and n. 1 (1986). Congress' stated purpose to "codify *Tobon-Builes*" reveals its intent to incorporate *Tobon-Builes'* standard for a willful violation, which required knowledge of the reporting requirements and a purpose to evade them. Nothing in *Tobon-Builes* suggests that knowledge of the illegality of one's conduct is required.[10]

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[10] Contrary to the majority's suggestion, *ante,* at 147–148, n. 17, Congress did sanction *Tobon-Builes'* scienter standard. In that case, which Congress intended to "codify," the Eleventh Circuit clearly addressed the

The Senate Report proceeds to explain the intent required under the antistructuring provision:

> "For example, a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days

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level of knowledge required for a willful violation. See *United States* v. *Tobon-Builes*, 706 F. 2d 1092, 1101 (CA11 1983). Moreover, Congress was aware of the standard that the court had adopted, explicitly characterizing *Tobon-Builes* as imposing criminal liability upon individuals who structure transactions "to evade the reporting requirements." S. Rep. No. 99–433, at 21.

The majority misreads the Senate Report as stating that § 5324 creates the structuring offense "*'[i]n addition'* to codifying *Tobon-Builes.*" *Ante*, at 148, n. 17. The phrase "in addition" plainly refers to the previous sentence in the Report, which states that § 5324 "would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact." S. Rep. No. 99–433, at 22. The "codification" of *Tobon-Builes* encompasses both sentences, and thus all three subsections of the original § 5324. In any event, there is no doubt that the Report's reference to "codifying *Tobon-Builes*" is a reference to the creation of the antistructuring offense, particularly given that *Tobon-Builes* expressly imposed criminal liability for "structuring" transactions. 706 F. 2d, at 1101.

Even more direct evidence of Congress' intent to incorporate the *Tobon-Builes* scienter standard is found in the response to a question from Senator D'Amato, the Senate sponsor of the antistructuring provision. He asked Deputy Assistant Attorney General Knapp and Assistant United States Attorney Sun: "Assuming that [the antistructuring] provision had been on the books, could you have demonstrated a willful violation in the *Anzalone, Varbel* and *Denemark* cases?" The written response stated: "Assuming that the terms of [the antistructuring provision] were in effect at the time of the conduct described in *Anzalone, Varbel,* and *Denemark,* the result would, or should have been markedly different. Statements from defendants in those cases indicated that the structuring conduct was purposely undertaken to evade the reporting requirements of Title 31. As this is expressly what is prohibited under [the antistructuring provision], a willful violation . . . would have been demonstrated." Hearing on S. 571 and S. 2306 before the Senate Committee on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess., at 141–142.

> *with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions,* would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting $2,000 in currency into four transactions of $500 each), would not be subject to liability under the proposed amendment." S. Rep. No. 99–433, at 22 (emphasis added).

The Committee's specification of the requisite intent as only the intent to prevent a bank from filing reports confirms that Congress did not contemplate a departure from the general rule that knowledge of illegality is not an essential element of a criminal offense.

A recent amendment to § 5324 further supports the interpretation of the court below. In 1992, Congress enacted the Annunzio-Wylie Anti-Money Laundering Act, creating a parallel antistructuring provision for the reporting requirements under 31 U. S. C. § 5316, which governs international monetary transportation. See Pub. L. 102–550, Tit. XV, § 1525(a), 106 Stat. 4064.[11] Like the provision at issue here, the new provision prohibits structuring "for the purpose of evading the reporting requirements" (in that case, the requirements of § 5316). At the time Congress amended the statute, every Court of Appeals to consider the issue had held that a willful violation of the antistructuring provision requires knowledge of the bank's reporting requirements and an intent to evade them; none had held that knowledge of the illegality of structuring was required. See n. 3, *supra.*

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[11] The new law moved the antistructuring provision at issue here into a new subsection (a) of § 5324 and created subsection (b) for the new antistructuring provision.

The House Report accompanying an earlier bill containing the pertinent provision explained:

> "Under the new provision, codified as subsection (b) of section 5324, it would be illegal to structure the importation or exportation of monetary instruments with the intent to evade the . . . reporting requirement. As is the case presently for structuring cases involving currency transaction reports, the government would have to prove that the defendant knew of the . . . reporting requirement, *but would not have to prove that the defendant knew that structuring itself had been made illegal. United States* v. *Hoyland,* 903 F. 2d 1288 (9th Cir. 1990)." H. R. Rep. No. 102–28, pt. 1, p. 45 (1991) (emphasis added).[12]

The 1992 amendment's replication of the original antistructuring provision's language strongly suggests that Congress intended to preserve the then-uniform interpretation of the scienter requirement of § 5324. See *Keene Corp.* v. *United States,* 508 U. S. 200, 212–213 (1993). At the very least, then, today's decision poses a dilemma for any attempt to reconcile the two parallel antistructuring provisions now codified in § 5324: Courts must either ignore clear evidence of legislative intent as to the newly added antistructuring provision or interpret its identical language differently from the antistructuring provision at issue in this case.

Finally, it cannot be ignored that the majority's interpretation of § 5324 as a practical matter largely nullifies the effect of that provision. In codifying the currency transaction reporting requirements in 1970, "Congress recognized the importance of reports of large and unusual currency transactions in ferreting out criminal activity." *California Bankers Assn.* v. *Shultz,* 416 U. S. 21, 38 (1974). Congress enacted the antistructuring law to close what it perceived as a major loophole in the federal reporting scheme due to easy circumvention.[13] Because requiring proof of actual knowledge of illegality will make prosecution for structuring difficult or impossible in most cases,[14] the Court's decision reopens the loophole that Congress tried to close.

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[12] The Court of Appeals for the Ninth Circuit relied on *Hoyland* in affirming the conviction in this case.

III

The petitioner in this case was informed by casino officials that a transaction involving more than $10,000 in cash must be reported, was informed by the various banks he visited that banks are required to report cash transactions in excess of $10,000, and then purchased $76,000 in cashier's checks, each for less than $10,000 and each from a different bank. Petitioner Ratzlaf, obviously not a person of limited intelligence, was anything but uncomprehending as he traveled from bank to bank converting his bag of cash to cashier's checks in $9,500 bundles. I am convinced that his actions constituted a "willful" violation of the antistructuring provision embodied in 31 U. S. C. § 5324. As a result of today's decision, Waldemar Ratzlaf—to use an old phrase—will be "laughing all the way to the bank."

The majority's interpretation of the antistructuring provision is at odds with the statutory text, the intent of Congress, and the fundamental principle that knowledge of illegality is not required for a criminal act. Now Congress must try again to fill a hole it rightly felt it had filled before. I dissent.

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[13] See, *e. g.*, S. Rep. No. 99-433, at 2-3, 7.

[14] See Welling, Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions, 41 Fla. L. Rev. 287, 320 (1989).

WEISS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

No. 92–1482. Argued November 3, 1993—Decided January 19, 1994*

After courts-martial sentenced petitioners Weiss and Hernandez, United States Marines, on their pleas of guilty to offenses under the Uniform Code of Military Justice (UCMJ), their convictions were affirmed by the Navy-Marine Corps Court of Military Review in separate appeals. In affirming Weiss' conviction, the Court of Military Appeals rejected his contentions, first, that military trial and appellate judges have no authority to convict because the method of their appointment by the various Judge Advocates General under the UCMJ violates the Appointments Clause, U. S. Const., Art. II, §2, cl. 2, and, second, that such judges' lack of a fixed term of office violates the Fifth Amendment's Due Process Clause. Based on this decision, the court summarily affirmed Hernandez' conviction.

Held:

1. The current method of appointing military judges does not violate the Appointments Clause, which, *inter alia,* requires the President to appoint "Officers of the United States" with the advice and consent of the Senate. All of the military judges involved in these cases were already commissioned military officers when they were assigned to serve as judges, and thus they had already been appointed pursuant to the Clause. The position of military judge is not so different from other positions to which an officer may be assigned that Congress has by implication required a second appointment under the Clause before the officer may discharge judicial duties. The fact that the UCMJ requires military judges to possess certain qualifications, including membership in a state or federal bar, does not in itself indicate a congressional intent to create a separate office, since special qualifications are needed to fill a host of military positions. Moreover, the UCMJ's explicit and exclusive treatment of military judges as officers who must be "detailed" or "assigned" by a superior officer is quite different from Congress' treatment of a number of top-level positions in the military hierarchy, such as Chairman of the Joint Chiefs of Staff, for which a second appointment under the Clause is expressly required. Nor does the Clause by its own

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*Together with *Hernandez* v. *United States,* also on certiorari to the same court (see this Court's Rule 12.2).

force require a second appointment. *Buckley* v. *Valeo,* 424 U. S. 1, and subsequent decisions simply do not speak to this question. The present case is also distinguishable from *Shoemaker* v. *United States,* 147 U. S. 282. Even assuming, *arguendo,* that the "germaneness" principle set forth in *Shoemaker, id.,* at 300–301, applies to the present situation, no second appointment is necessary because the role of military judge is "germane" to that of military officer: By contrast to civilian society, nonjudicial military officers play a significant part in the administration of military justice; and, by the same token, the position of military judge is less distinct from other military positions than the office of full-time civilian judge is from other offices in civilian society. Pp. 169–176.

2. The lack of a fixed term of office for military judges does not violate the Due Process Clause. Neither *Mathews* v. *Eldridge,* 424 U. S. 319, nor *Medina* v. *California,* 505 U. S. 437, provides a due process analysis that is appropriate to the military context, in which judicial deference to Congress' determinations is at its apogee. Rather, the appropriate standard is that found in *Middendorf* v. *Henry,* 425 U. S. 25, 44: whether the factors militating in favor of fixed terms are so extraordinarily weighty as to overcome the balance struck by Congress. The historical fact that military judges in the Anglo-American system have never had tenure is a factor that must be weighed in this calculation. Moreover, the applicable provisions of the UCMJ, and corresponding regulations, sufficiently insulate military judges from the effects of command influence. Thus, since neither history nor current practice supports petitioners' assumption that a military judge who does not have a fixed term lacks the independence necessary to ensure impartiality, petitioners have fallen far short of satisfying the applicable standard. Pp. 176–181.

36 M. J. 224 and 37 M. J. 252, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined, and in which SCALIA and THOMAS, JJ., joined as to Parts I and II–A. SOUTER, J., filed a concurring opinion, *post,* p. 182. GINSBURG, J., filed a concurring opinion, *post,* p. 194. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post,* p. 195.

Alan B. Morrison argued the cause for petitioners. With him on the briefs were *Philip D. Cave, Dwight H. Sullivan, Eugene R. Fidell,* and *Ronald W. Meister.*

Solicitor General Days argued the cause for the United States. With him on the brief were *Acting Assistant At-*

torney General Keeney, Deputy Solicitor General Bryson, Paul J. Larkin, Jr., Thomas E. Booth, Theodore G. Hess, and *Albert Diaz.*†

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We must decide in these cases whether the current method of appointing military judges violates the Appointments Clause of the Constitution, and whether the lack of a fixed term of office for military judges violates the Fifth Amendment's Due Process Clause. We conclude that neither constitutional provision is violated.

Petitioner Weiss, a United States Marine, pleaded guilty at a special court-martial to one count of larceny, in violation of Article 121 of the Uniform Code of Military Justice (UCMJ or Code), 10 U. S. C. § 921. He was sentenced to three months of confinement, partial forfeiture of pay, and a bad-conduct discharge. Petitioner Hernandez, also a Marine, pleaded guilty to the possession, importation, and distribution of cocaine, in violation of Article 112a, UCMJ, 10 U. S. C. § 912a, and conspiracy, in violation of Article 81, UCMJ, 10 U. S. C. § 881. He was sentenced to 25 years of confinement, forfeiture of all pay, a reduction in rank, and a dishonorable discharge. The convening authority reduced Hernandez' sentence to 20 years of confinement.

The Navy-Marine Corps Court of Military Review, in separate appeals, affirmed petitioners' convictions. The Court of Military Appeals granted plenary review in petitioner Weiss' case to address his contention that the judges in his case had no authority to convict him because their appointments violated the Appointments Clause, and their lack of a fixed term of office violated the Due Process Clause. Relying on its recent decision in *United States* v. *Graf,* 35 M. J. 450 (1992), cert. pending, No. 92–1102, in which the court unanimously held that due process does not require military judges to have a fixed term of office, the court rejected Weiss' due process argument. 36 M. J. 224, 235, n. 1 (1992). In a splintered decision, the court also rejected petitioner's Appointments Clause challenge.

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†Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *David B. Isbell, John Vanderstar, David H. Resnicoff, Steven R. Shapiro,* and *Arthur B. Spitzer;* and for the United States Air Force Appellate Defense Division by *Robert I. Smith, Jay L. Cohen,* and *Frank J. Spinner.*

Two of the five judges concluded that the initial appointment of military trial and appellate judges as commissioned officers is sufficient to satisfy the Appointments Clause. *Id.,* at 225–234 (plurality opinion). A separate appointment before taking on the duties of a military judge is unnecessary, according to the plurality, in part because the duties of a judge in the military justice system are germane to the duties that military officers already discharge. *Ibid.* One judge concurred in the result only, concluding that the Appointments Clause does not apply to the military. *Id.,* at 234–240 (opinion of Crawford, J.). The other two judges dissented separately. Both stressed the significant changes brought about by the Military Justice Act of 1968, particularly the duties added to the newly created office of military judge, and both concluded that the duties of a military judge are sufficiently distinct from the other duties performed by military officers to require a second appointment. See *id.,* at 240–256 (Sullivan, C. J., dissenting), and *id.,* at 256–263 (Wiss, J., dissenting).

The Court of Military Appeals accordingly affirmed petitioner Weiss' conviction. Based on its decision in *Weiss,* the court, in an unpublished opinion, also affirmed petitioner Hernandez' conviction. Judgt. order reported at 37 M. J. 252 (1993). Weiss and Hernandez then jointly petitioned for our review, and we granted certiorari. 508 U. S. 939 (1993).

It will help in understanding the issues involved to review briefly the contours of the military justice system and the role of military judges within that system. Pursuant to Article I of the Constitution, Congress has established three tiers of military courts. See U. S. Const., Art. I, § 8, cl. 14. At the trial level are the courts-martial, of which there are three types: summary, special, and general. The summary court-martial adjudicates only minor offenses, has jurisdiction only over servicemembers, and can be conducted only with their consent. It is presided over by a single commissioned officer who can impose up to one month of confinement and other relatively modest punishments. Arts. 16(3), 20, UCMJ, 10 U. S. C. §§ 816(3), 820.

The special court-martial usually consists of a military judge and three court-martial members,[1] although the Code allows the members to sit without a judge, or the accused to elect to be tried by the judge alone. Art. 16(2), UCMJ, 10 U. S. C. § 816(2). A special court-martial has jurisdiction over most offenses under the UCMJ, but it may impose punishment no greater than six months of confinement, three months of hard labor without confinement, a bad-conduct discharge, partial and temporary forfeiture of pay, and a reduction in grade. Art. 19, UCMJ, 10 U. S. C. § 819. The general court-martial consists of either a military judge and at least five members, or the judge alone if the accused so requests. Art. 16(1), UCMJ, 10 U. S. C. § 816(1). A general court-martial has jurisdiction over all offenses under the UCMJ and may impose any lawful sentence, including death. Art. 18, UCMJ, 10 U. S. C. § 818.

The military judge, a position that has officially existed only since passage of the Military Justice Act of 1968, acts as presiding officer at a special or general court-martial. Art. 26, UCMJ, 10 U. S. C. § 826. The judge rules on all legal questions, and instructs court-martial members regarding the law and procedures to be followed. Art. 51, UCMJ,

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[1] Court-martial members may be officers or enlisted personnel, depending on the military status of the accused; the members' responsibilities are analogous to, but somewhat greater than, those of civilian jurors. See Art. 25, UCMJ, 10 U. S. C. § 825.

10 U. S. C. §851. The members decide guilt or innocence and impose sentence unless, of course, the trial is before the judge alone. *Ibid.* No sentence imposed becomes final until it is approved by the officer who convened the court-martial. Art. 60, UCMJ, 10 U. S. C. §860.

Military trial judges must be commissioned officers of the Armed Forces[2] and members of the bar of a federal court or a State's highest court. Art. 26, UCMJ, 10 U. S. C. §826. The judges are selected and certified as qualified by the Judge Advocate General of their branch of the Armed Forces.[3] They do not serve for fixed terms and may perform judicial duties only when assigned to do so by the appropriate Judge Advocate General. While serving as judges, officers may also, with the approval of the Judge Advocate General, perform other tasks unrelated to their judicial duties. *Ibid.* There are approximately 74 judges currently certified to preside at general and special courts-martial. An additional 25 are certified to preside only over special courts-martial.

At the next tier are the four Courts of Military Review, one each for the Army, Air Force, Coast Guard, and Navy-Marine Corps. These courts, which usually sit in three-judge panels, review all cases in which the sentence imposed is for one or more years of confinement, involves the dismissal of a commissioned officer, or involves the punitive discharge of an enlisted servicemember. Art. 66, UCMJ, 10 U. S. C. §866. The courts may review *de novo* both factual and legal findings, and they may overturn convictions and sentences. *Ibid.*

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[2] All commissioned officers are appointed by the President, with the advice and consent of the Senate. 10 U. S. C. §531.

[3] The Judge Advocate General for each service is the principal legal officer for that service. See 10 U. S. C. §3037 (Army), §5148 (Navy-Marine Corps), §8037 (Air Force); Art. 1(1), UCMJ, 10 U. S. C. §801(1) (Coast Guard).

Appellate judges may be commissioned officers or civilians, but each must be a member of a bar of a federal court or of a State's highest court. *Ibid.* The judges are selected and assigned to serve by the appropriate Judge Advocate General. *Ibid.* Like military trial judges, appellate judges do not serve for a fixed term. There are presently 31 appellate military judges.

Atop the system is the Court of Military Appeals, which consists of five civilian judges who are appointed by the President, with the advice and consent of the Senate, for fixed terms of 15 years. Arts. 67, 142, UCMJ, 10 U. S. C. §§867, 942 (1988 ed., Supp. IV). The appointment and tenure of these judges are not at issue here.

I

The Appointments Clause of Article II of the Constitution reads as follows:

> "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U. S. Const., Art. II, §2, cl. 2.

We begin our analysis on common ground. The parties do not dispute that military judges, because of the authority and responsibilities they possess, act as "Officers" of the United States. See *Freytag* v. *Commissioner*, 501 U. S. 868 (1991) (concluding special trial judges of Tax Court are officers); *Buckley* v. *Valeo*, 424 U. S. 1, 126 (1976) ("[A]ny appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States,' and must, therefore, be appointed in the manner prescribed by [the Appointments Clause]"). The parties are also in agreement, and rightly so, that the Appointments Clause applies to military officers. As we said in *Buckley*, "*all* officers of the United States are to be appointed in accordance with the Clause. . . . No class or type of officer is excluded because of its special functions." *Id.*, at 132 (emphasis in original).

It follows that those serving as military judges must be appointed pursuant to the Appointments Clause. All of the military judges involved in these cases, however, were already commissioned officers when they were assigned to serve as judges,[4] and thus they had already been appointed by the President with the advice and consent of the Senate.[5] The question we must answer, therefore, is whether these officers needed another appointment pursuant to the Appointments Clause before assuming their judicial duties. Petitioners contend that the position of military judge is so different from other positions to which an officer may be assigned that either Congress has, by implication, required a second appointment, or the Appointments Clause, by constitutional command, requires one. We reject both of these arguments.

Petitioners' argument that Congress by implication has required a separate appointment is based in part on the fact that military judges must possess certain qualifications, including membership in a state or federal bar. But such special qualifications in themselves do not, we believe, indicate a congressional intent to create a separate office. Special qualifications are needed to perform a host of military duties; yet no one could seriously contend that the positions of military lawyer or pilot, for example, are distinct offices because officers performing those duties must possess additional qualifications.

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[4] The constitutionality of the provision allowing civilians to be assigned to Courts of Military Review, without being appointed pursuant to the Appointments Clause, obviously presents a quite different question. See Art. 66(a), UCMJ, 10 U. S. C. § 866(a). It is not at issue here.

[5] Although the record before us does not contain complete information regarding the military careers of the judges involved in these cases, it is quite possible that they had been appointed more than once before being detailed or assigned to serve as military judges. This is because 10 U. S. C. § 624 requires a new appointment by the President, with the advice and consent of the Senate, each time a commissioned officer is promoted to a higher grade—*e. g.*, if a captain is promoted to major, he must receive another appointment.

Petitioners' argument also ignores the fact that Congress has not hesitated to expressly require the separate appointment of military officers to certain positions. An additional appointment by the President and confirmation by the Senate is required for a number of top-level positions in the military hierarchy, including: the Chairman and Vice Chairman of the Joint Chiefs of Staff, 10 U. S. C. §§ 152, 154; the Chief and Vice Chief of Naval Operations, §§ 5033, 5035; the Commandant and Assistant Commandant of the Marine Corps, §§ 5043, 5044; the Surgeons General of the Army, Navy, and Air Force, §§ 3036, 5137, 8036; the Chief of Naval Personnel, § 5141; the Chief of Chaplains, § 5142; and the Judge Advocates General of the Army, Navy, and Air Force, §§ 3037, 5148, 8037.

With respect to other positions, however, Congress has spoken quite differently. The Deputy and Assistant Chiefs of Staff for the Army, for example, are "general officers *detailed* to these positions." § 3035 (emphasis added). The Chief of Staff of the Marine Corps and his assistants are "detailed" to those positions by the Secretary of the Navy. § 5045. Commissioned officers "may be detailed for duty" with the American Red Cross by the appropriate military Secretary. § 711a. Secretaries of military departments "may assign or detail members of the armed forces" to be inspectors of buildings owned or occupied abroad by the United States. § 713. The Secretary of the Navy "may assign" enlisted members of the Navy to serve as custodians of foreign embassies and consulates. § 5983. And the President may "detail" officers of the Navy to serve as superintendents or instructors at nautical schools. This contrasting treatment indicates rather clearly that Congress repeatedly and consistently distinguished between an office that would require a separate appointment and a position or duty to which one could be "assigned" or "detailed" by a superior officer.

The sections of the UCMJ relating to military judges speak explicitly and exclusively in terms of "detail" or "assign"; nowhere in these sections is mention made of a separate appointment. Section 826(a) provides that a military judge shall be "detail[ed]" to each general court-martial, and may be "detail[ed]" to any special court-martial. The military judge of a general court-martial must be designated by the Judge Advocate General, or his designee, § 826(c), but the appropriate Service Secretary prescribes by regulation the manner in which military judges are detailed for special courts-martial, and what persons are authorized to so detail them. Section 866, in turn, provides that military appellate judges shall be "assigned to a Court of Military Review." The appropriate Judge Advocate General designates a chief judge for each Court of Military Review, and the chief judge determines "on which panels of the court the appellate judges *assigned* to the court will serve and which military judge *assigned* to the court will act as the senior judge on each panel." *Ibid.* (emphasis added).

Congress' treatment of military judges is thus quite different from its treatment of those offices, such as Chairman of the Joint Chiefs of Staff, for which it wished to require a second appointment before already-commissioned officers could occupy them. This difference negates any permissible inference that Congress intended that military judges should receive a second appointment, but in a fit of absentmindedness forgot to say so.

Petitioners' alternative contention is that even if Congress did not intend to require a separate appointment for a military judge, the Appointments Clause requires such an appointment by its own force. They urge upon us in support of this contention our decisions in *Buckley* v. *Valeo,* 424 U. S. 1 (1976), *Freytag* v. *Commissioner,* 501 U. S. 868 (1991), and *Morrison* v. *Olson,* 487 U. S. 654 (1988). These decisions undoubtedly establish the analytical framework upon which to base the conclusion that a military judge is an "officer of the United States"—a proposition to which both parties agree. But the decisions simply do not speak to the issue of whether, and when, the Appointments Clause may require a second appointment.

The lead and dissenting opinions in the Court of Military Appeals devoted considerable attention to, and the parties before us have extensively briefed, the significance of our opinion in *Shoemaker* v. *United States,* 147 U. S. 282 (1893). There Congress had enacted a statute establishing a commission to supervise the development of Rock Creek Park in the District of Columbia. Three of the members were appointed by the President with the advice and consent of the Senate, but the remaining two members were the Chief of Engineers of the Army and the Engineer Commissioner of the District of Columbia. Both of the latter were already commissioned as military officers, but it was contended that the Appointments Clause required that they again be appointed to their new positions. The Court rejected the argument, saying:

> "[T]he argument is, that while Congress may create an office, it cannot appoint the officer; that the officer can only be appointed by the President with the approval of the Senate. . . . As, however, the two persons whose eligibility is questioned were at the time of the passage of the act . . . officers of the United States who had been theretofore appointed by the President and confirmed by the Senate, we do not think that, because additional duties, germane to the offices already held by them, were devolved upon them by the act, it was necessary

> that they should be again appointed by the President and confirmed by the Senate. It cannot be doubted, and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed." *Id.*, at 300–301.

The present cases before us differ from *Shoemaker* in several respects, at least one of which is significant for purposes of Appointments Clause analysis. In *Shoemaker*, Congress assigned new duties to two existing offices, each of which was held by a single officer. This no doubt prompted the Court's description of the argument as being that "while Congress may create an office, it cannot appoint the officer." By looking to whether the additional duties assigned to the offices were "germane," the Court sought to ensure that Congress was not circumventing the Appointments Clause by unilaterally appointing an incumbent to a new and distinct office. But here the statute authorized an indefinite number of military judges, who could be designated from among hundreds or perhaps thousands of qualified commissioned officers. In short, there is no ground for suspicion here that Congress was trying to both create an office and also select a particular individual to fill the office. Nor has Congress effected a "diffusion of the appointment power," about which this Court expressed concern in *Freytag, supra,* at 878.

Even if we assume, *arguendo,* that the principle of "germaneness" applies to the present situation, we think that principle is satisfied here. By enacting the Uniform Code of Military Justice in 1950, and through subsequent statutory changes, Congress has gradually changed the system of military justice so that it has come to more closely resemble the civilian system. But the military in important respects remains a "specialized society separate from civilian society," *Parker* v. *Levy,* 417 U. S. 733, 743 (1974). Although military judges obviously perform certain unique and important functions, all military officers, consistent with a long tradition, play a role in the operation of the military justice system.

Commissioned officers, for example, have the power and duty to "quell quarrels, frays, and disorders among persons subject to [the UCMJ] and to apprehend persons subject to [the UCMJ] who take part therein." Art. 7(c), UCMJ, 10 U. S. C. § 807(c). Commanding officers can impose nonjudicial disciplinary punishment for minor offenses, without the intervention of a court-martial, which includes correctional custody, forfeiture of pay, reduction in grade, extra duties, restriction to certain limits, and detention of pay. Art. 15, UCMJ, 10 U. S. C. § 815. A commissioned officer may serve as a summary court-martial or a member of a special or general court-martial. When acting as a summary court-martial or as the president of a special court-martial without a military judge, this officer conducts the proceedings and resolves all issues that would be handled by the military judge, except for challenge for cause against the president of a special court-martial without a military judge. Art. 51, UCMJ, 10 U. S. C. § 851. Convening authorities, finally, have the authority to review and modify the sentence imposed by courts-martial. Art. 60, UCMJ, 10 U. S. C. § 860. Thus, by contrast to civilian society, nonjudicial military officers play a significant part in the administration of military justice.

By the same token, the position of military judge is less distinct from other military positions than the office of full-time civilian judge is from other offices in civilian society. As the lead opinion in the Court of Military Appeals noted, military judges do not have any "inherent judicial authority separate from a court-martial to which they have been detailed. When they act, they do so as a court-martial, not as a military judge. Until detailed to a specific court-martial, they have no more authority than any other military officer of the same grade and rank." 36 M. J., at 228. Military appellate judges similarly exercise judicial functions only when they are "assigned" to a Court of Military Review. Neither military trial nor appellate judges, moreover, have a fixed term of office. Commissioned officers are assigned or detailed to the position of military judge by a Judge Advocate General for a period of time he deems necessary or appropriate, and then they may be reassigned to perform other duties. Even while serving as military trial judges, officers may perform, with the permission of the Judge Advocate General, duties unrelated to their judicial responsibilities. Art. 26(c), UCMJ, 10 U. S. C. § 826(c). Whatever might be the case in civilian society, we think that the role of military judge is "germane" to that of military officer.

In sum, we believe that the current scheme satisfies the Appointments Clause. It is quite clear that Congress has not required a separate appointment to the position of military judge, and we believe it equally clear that the Appointments Clause by its own force does not require a second appointment before military officers may discharge the duties of such a judge.

II

Petitioners next contend that the Due Process Clause requires that military judges must have a fixed term of office. Petitioners recognize, as they must, that the Constitution does not require life tenure for Article I judges, including military judges. See *United States ex rel. Toth* v. *Quarles*, 350 U. S. 11, 17 (1955). Nor does the trial by an Article I judge lacking life tenure violate an accused's due process rights. See *Palmore* v. *United States*, 411 U. S. 389, 410 (1973). Petitioners thus confine their argument to the assertion that due process requires military judges to serve for some fixed length of time—however short.

Congress, of course, is subject to the requirements of the Due Process Clause when legislating in the area of military affairs, and that Clause provides some measure of protection to defendants in military proceedings. See *Rostker* v. *Gold-*

berg, 453 U. S. 57, 67 (1981); *Middendorf* v. *Henry,* 425 U. S. 25, 43 (1976). But in determining what process is due, courts "must give particular deference to the determination of Congress, made under its authority to regulate the land and naval forces, U. S. Const., Art. I, § 8." *Ibid.* Petitioners urge that we apply the due process analysis established in *Mathews* v. *Eldridge,* 424 U. S. 319, 334–335 (1976). The Government contends that *Medina* v. *California,* 505 U. S. 437 (1992), supplies the appropriate analytical framework.

Neither *Mathews* nor *Medina,* however, arose in the military context, and we have recognized in past cases that "the tests and limitations [of due process] may differ because of the military context." *Rostker, supra,* at 67. The difference arises from the fact that the Constitution contemplates that Congress has "plenary control over rights, duties, and responsibilities in the framework of the Military Establishment, including regulations, procedures, and remedies related to military discipline." *Chappell* v. *Wallace,* 462 U. S. 296, 301 (1983). Judicial deference thus "is at its apogee" when reviewing congressional decisionmaking in this area. *Rostker, supra,* at 70. Our deference extends to rules relating to the rights of servicemembers: "Congress has primary responsibility for the delicate task of balancing the rights of servicemen against the needs of the military. . . . [W]e have adhered to this principle of deference in a variety of contexts where, as here, the constitutional rights of servicemen were implicated." *Solorio* v. *United States,* 483 U. S. 435, 447–448 (1987).

We therefore believe that the appropriate standard to apply in these cases is found in *Middendorf, supra,* where we also faced a due process challenge to a facet of the military justice system. In determining whether the Due Process Clause requires that servicemembers appearing before a summary court-martial be assisted by counsel, we asked "whether the factors militating in favor of counsel at summary courts-martial are so extraordinarily weighty as to overcome the balance struck by Congress." 425 U. S., at 44. We ask the same question here with respect to fixed terms of office for military judges.

It is elementary that "a fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison,* 349 U. S. 133, 136 (1955). A necessary component of a fair trial is an impartial judge. See *ibid.; Tumey* v. *Ohio,* 273 U. S. 510, 532 (1927). Petitioners, however, do not allege that the judges in their cases were or appeared to be biased. Instead, they ask us to assume that a military judge who does not have a fixed term of office lacks the independence necessary to ensure impartiality. Neither history nor current practice, however, supports such an assumption.

A

Although a fixed term of office is a traditional component of the Anglo-American civilian judicial system, it has never been a part of the military justice tradition. The early English military tribunals, which served as the model for our own military justice system, were historically convened and presided over by a military general. No tenured military judge presided. See Schlueter, The Court-Martial: An Historical Survey, 87 Mil. L. Rev. 129, 135, 136–144 (1980).

In the United States, although Congress has on numerous occasions during our history revised the procedures governing courts-martial, it has never required tenured judges to preside over courts-martial or to hear immediate appeals therefrom.[6] See W. Winthrop, Military Law and Precedents

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[6] Congress did create a nine-member commission in 1983 to examine, *inter alia,* the possibility of providing tenure for military judges. Military Justice Act of 1983, Pub. L. 98–209, § 9(b), 97 Stat. 1393, 1404–1405 (1983). The commission published its report a year later, in which it recommended against providing a guaranteed term of office for military trial and appellate judges. See D. Schlueter, Military Criminal Justice: Practice and Procedure 33–34, and nn. 86, 87 (3d ed. 1992) (listing members of commission and describing report). Congress has taken no further action on the subject.

21–24, 953–1000 (2d ed. 1920) (describing and reprinting the Articles of War, which governed court-martial proceedings during the 17th and 18th centuries); F. Gilligan & F. Lederer, 1 Court-Martial Procedure 11–24 (1991) (describing 20th-century revisions to Articles of War, and enactment of and amendments to UCMJ). Indeed, as already mentioned, Congress did not even create the position of military judge until 1968. Courts-martial thus have been conducted in this country for over 200 years without the presence of a tenured judge, and for over 150 years without the presence of any judge at all.

B

As the Court of Military Appeals observed in *Graf*, 35 M. J., at 462, the historical maintenance of the military justice system without tenured judges "suggests the absence of a fundamental fairness problem." Petitioners in effect urge us to disregard this history, but we are unwilling to do so. We do not mean to say that any practice in military courts which might have been accepted at some time in history automatically satisfies due process of law today. But as Congress has taken affirmative steps to make the system of military justice more like the American system of civilian justice, it has nonetheless chosen not to give tenure to military judges. The question under the Due Process Clause is whether the existence of such tenure is such an extraordinarily weighty factor as to overcome the balance struck by Congress. And the historical fact that military judges have never had tenure is a factor that must be weighed in this calculation.

A fixed term of office, as petitioners recognize, is not an end in itself. It is a means of promoting judicial independence, which in turn helps to ensure judicial impartiality. We believe the applicable provisions of the UCMJ, and corresponding regulations, by insulating military judges from the effects of command influence, sufficiently preserve judicial impartiality so as to satisfy the Due Process Clause.

Article 26 places military judges under the authority of the appropriate Judge Advocate General rather than under the authority of the convening officer. 10 U. S. C. § 826. Rather than exacerbating the alleged problems relating to judicial independence, as petitioners suggest, we believe this structure helps protect that independence. Like all military officers, Congress made military judges accountable to a superior officer for the performance of their duties. By placing judges under the control of Judge Advocates General, who have no interest in the outcome of a particular court-martial, we believe Congress has achieved an acceptable balance between independence and accountability.

Article 26 also protects against unlawful command influence by precluding a convening authority or any commanding officer from preparing or reviewing any report concerning the effectiveness, fitness, or efficiency of a military judge relating to his judicial duties. *Ibid.* Article 37 prohibits convening authorities from censuring, reprimanding, or admonishing a military judge "with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding." 10 U. S. C. § 837. Any officer who "knowingly and intentionally fails to enforce or comply" with Article 37 "shall be punished as a court-martial may direct." Art. 98, UCMJ, 10 U. S. C. § 898. The Code also provides that a military judge, either trial or appellate, must refrain from adjudicating a case in which he has previously participated, Arts. 26(c), 66(h), UCMJ, 10 U. S. C. §§ 826(c), 866(h), and the Code allows the accused to challenge both a court-martial member and a court-martial judge for cause, Art. 41, UCMJ, 10 U. S. C. § 841. The Code also allows the accused to learn the identity of the military judge before choosing whether to be tried by the judge alone, or by the judge and court-martial members. Art. 16, UCMJ, 10 U. S. C. § 816.

The entire system, finally, is overseen by the Court of Military Appeals, which is composed entirely of civilian judges who serve for fixed terms of 15 years. That court has demonstrated its vigilance in checking any attempts to exert improper influence over military judges. In *United States* v. *Mabe*, 33 M. J. 200 (1991), for example, the court considered whether the Judge Advocate General of the Navy, or his designee, could rate a military judge based on the appropriateness of the judge's sentences at courts-martial. As the court later described: "We held [in *Mabe*] that the existence of such a power in these military officers was inconsistent with Congress' establishment of the military 'judge' in Article 26 and its exercise violated Article 37 of the Code." *Graf*, 35 M. J., at 465. And in *Graf*, the court held that it would also violate Articles 26 and 37 if a Judge Advocate General decertified or transferred a military judge based on the General's opinion of the appropriateness of the judge's findings and sentences. *Ibid.*[7]

The absence of tenure as a historical matter in the system of military justice, and the number of safeguards in place to ensure impartiality, lead us to reject petitioners' due process challenge. Petitioners have fallen far short of demonstrating that the factors favoring fixed terms of office are so extraordinarily weighty as to overcome the balance achieved by Congress. See *Middendorf*, 425 U. S., at 44.

For the reasons stated, we reject the petitioners' Appointments Clause and Due Process Clause attacks on the judges who convicted them and those who heard their appeals. The judgments of the Court of Military Appeals are accordingly

Affirmed.

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[7] This added limitation on the power of the Judge Advocates General to remove military judges refutes petitioners' contention that Judge Advocates General have unfettered discretion both to appoint and remove military judges.

JUSTICE SOUTER, concurring.

I join the Court's opinion on the understanding that military judges, like ordinary commissioned military officers, are "inferior officers" within the meaning of the Appointments Clause. Because these cases would raise a far more difficult constitutional question than the one the Court today decides if, as petitioners argue, military judges were "principal officers," I write separately to explain why I conclude that they are not.

I

Under the Appointments Clause, the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" all "Officers of the United States" (or "principal officers," as we have called them, see *Morrison* v. *Olson*, 487 U. S. 654, 670 (1988); *Buckley* v. *Valeo*, 424 U. S. 1, 132 (1976)). Art. II, § 2. "[B]ut the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." *Ibid.*

Military officers performing ordinary military duties are inferior officers, and none of the parties to this case contends otherwise. Though military officers are appointed in the manner of principal officers, no analysis permits the conclusion that each of the more than 240,000 active military officers (see Department of Defense, Military Manpower Statistics 18 (Mar. 31, 1993) (Table 9)) is a principal officer. See *Morrison* v. *Olson*, *supra*, at 670–673 (outlining criteria for determining Appointments Clause status of a federal officer). Congress has simply declined to adopt the less onerous appointment process available for inferior officers.

The Uniform Code of Military Justice authorizes the Judge Advocate General of the relevant branch of the Armed Forces to select as a military judge any commissioned military officer who meets certain qualifications going to legal knowledge and experience. See *ante*, at 168. If, as petitioners argue, military judges were principal officers, this method of choosing them from among the ranks of inferior officers would raise two constitutional questions. As to military officers who received their commissions before Congress created the post of military judge in 1968, the question would be whether the duties of a principal officer may be assigned to an existing multiperson inferior office, so that some of the office's occupants, at the choice of a lower level Executive Branch official, will serve in new principal-officer positions. And as to officers who received their commissions after 1968 and whose appointments therefore included the potential for service as military judge, the question would be whether a multiperson office may be created in which individuals will occupy, again at the choice of a lower level Executive Branch official, either inferior-officer or principal-officer positions.

The Appointments Clause requires each question to be answered in the negative. "The Constitution, for purposes of appointment, very clearly divides all its officers into two classes," *United States* v. *Germaine*, 99 U. S. 508, 509 (1879), and though Congress has broad power to create federal offices and assign duties to them, see *Myers* v. *United States*, 272 U. S. 52, 128–129 (1926), it may not, even with the President's assent, disregard the Constitution's distinction between principal and inferior officers. It may not, in particular, dispense with the precise process of appointment required for principal officers, whether directly or "by indirection." *Springer* v. *Philippine Islands*, 277 U. S. 189, 202 (1928). Accordingly, I find it necessary to consider the status of military judges under the Appointments Clause but, first, to explain why the Appointments Clause's origins and purposes support my reading of its text.

A

In framing an Appointments Clause that would ensure "a judicious choice" of individuals to fill the important offices of the Union, The Federalist No. 76, p. 510 (J. Cooke ed. 1961) (A. Hamilton), the delegates to the Philadelphia Convention could draw on their experiences with two flawed methods of appointment. They were aware of the prerevolutionary "'manipulation of official appointments'" by the Crown and its colonial governors, "one of the American revolutionary generation's greatest grievances against executive power." *Freytag* v. *Commissioner*, 501 U. S. 868, 883 (1991) (quoting G. Wood, The Creation of The American Republic 1776–1787, p. 79 (1969)). They were also aware of the postrevolutionary abuse by several state legislatures which, in reaction, had been given the sole power of appointment; by the time of the Convention the lodging of exclusive appointing authority in state legislatures "'had become the principal source of division and faction in the states.'" *Freytag*, *supra*, at 904, and n. 4 (SCALIA, J., concurring in part and concurring in judgment) (quoting Wood, *supra*, at 407).

With error and overcorrection behind them, the Framers came to appreciate the necessity of separating at least to some degree the power to create federal offices (a power they assumed would belong to Congress) from the power to fill them, and they came to see good reason for placing the initiative to appoint the most important federal officers in the single-person presidency, not the multimember Legislature. But the Framers also recognized that lodging the appointment power in the President alone would pose much the same risk as lodging it exclusively in Congress: the risk of "a[n] incautious or corrupt nomination." 2 M. Farrand, Records of the Federal Convention of 1787, p. 43 (rev. ed. 1937) (J. Madison) (hereinafter Farrand). Just as the Appointments Clause's grant to the President of the power to nominate principal officers would avert legislative despotism, its requirement of Senate confirmation would serve as an "excellent check" against Presidential missteps or wrongdoing.

The Federalist No. 76, *supra*, at 513.[1] Accord, 3 J. Story, Commentaries on the Constitution of the United States 374–377 (1833) (The President will be more likely than "a large [legislative] body" to make appointments whose "qualifications are unquestioned, and unquestionable"; but because exclusive Presidential appointment power "may be abused," the Appointments Clause provides the "salutary check" of Senate confirmation, and "[t]he consciousness of this check will make the president more circumspect, and deliberate in his nominations for office").

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[1] Hamilton's Federalist Papers writings contain the most thorough contemporary justification for the method of appointing principal officers that the Framers adopted. See The Federalist Nos. 76 and 77, pp. 509–521. Hamilton was clear that the President ought initially to select principal officers and that the President was therefore rightly given the sole power to nominate:

"The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will on this account feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretentions to them." *Id.*, No. 76, at 510–511.

Hamilton also left no doubt that the role of ultimate approval assigned to the Senate was vital:

"To what purpose then require the co-operation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though in general a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity." *Id.*, at 513.

The same notes were struck in the Constitutional Convention, where Hamilton was actually the first to suggest that both the President and the Senate be involved in the appointments process. See 1 Farrand 128; J. Harris, The Advice and Consent of the Senate 21 (1953). For example, Gouvernor Morris, who was among those initially favoring vesting exclusive appointment power in the President, see 2 Farrand 82, 389, ultimately defended the assignment of shared authority for appointment on the ground that "as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security." *Id.*, at 539. See also 4 J. Elliot, Debates on the Federal Constitution 134 (1891) (James Iredell in North Carolina ratifying convention) ("[T]he Senate has no other influence but a restraint on improper appointments . . . . [The Appointments Clause provides] a double security"). See generally Harris, *supra*, at 17–26 (summarizing debates in the Constitutional Convention and in the ratifying conventions).

In the Framers' thinking, the process on which they settled for selecting principal officers would ensure "judicious" appointments not only by empowering the President and the Senate to check each other, but also by allowing the public to hold the President and Senators accountable for injudicious appointments. "[T]he circumstances attending an appointment [of a principal officer], from the mode of conducting it, would naturally become matters of notoriety," Hamilton wrote; "and the public would be at no loss to determine what part had been performed by the different actors." The Federalist No. 77, at 517. As a result,

> "[t]he blame of a bad nomination would fall upon the president singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the senate; aggravated by the consideration of their having counteracted the good intentions of the executive. If an ill appointment should be made the executive for nominating and the senate for approving would participate though in different degrees in the opprobrium and disgrace." *Ibid.*

The strategy by which the Framers sought to ensure judicious appointments of principal officers is, then, familiar enough: the Appointments Clause separates the Government's power but also provides for a degree of intermingling, all to ensure accountability and "preclude the exercise of arbitrary power." *Myers* v. *United States*, 272 U. S., at 293 (Brandeis, J., dissenting).

The strict requirements of nomination by the President and confirmation by the Senate were not carried over to the appointment of inferior officers. A degree of flexibility was thought appropriate in providing for the appointment of officers who, by definition, would have only inferior governmental authority. See 2 Farrand 627. But although they allowed an alternative appointment method for inferior officers, the Framers still structured the alternative to ensure accountability and check governmental power: any decision to dispense with Presidential appointment and Senate confirmation is Congress's to make, not the President's, but Congress's authority is limited to assigning the appointing power to the highly accountable President or the heads of federal departments, or, where appropriate, to the courts of law.

B

If the structural benefits the Appointments Clause was designed to provide are to be preserved, the Clause must be read to forbid the two ways in which the benefits can be defeated. First, no branch may aggrandize its own appointment power at the expense of another. See *Buckley* v. *Valeo*, 424 U. S., at 128–129. Congress, for example, may not unilaterally fill any federal office; and the President may neither select a principal officer without the Senate's concurrence, nor fill any office without Congress's authorization.[2]

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[2] While it is true that "the debates of the Constitutional Convention, and the Federalist Papers, are replete with expressions of fear that the Legislative Branch of the National Government will aggrandize itself at the expense of the other two branches," *Buckley* v. *Valeo*, 424 U. S. 1, 129 (1976), the Framers also expressed concern over the threat of expanding Presidential power, including specifically in the context of appointments. See, *e. g.*, 1 Farrand 101 (G. Mason); *id.*, at 103 (B. Franklin). Indeed, the Framers added language to both halves of the Appointments Clause specifically to address the concern that the President might attempt unilaterally to create and fill federal offices. See C. Warren, The Making of the Constitution 642 (1937) (discussing references in the Appointments Clause to principal offices "'established by Law,'" and to the power of appointing inferior officers which "'Congress may by law'" vest as specified). No doubt, Article I's assignment to Congress of the power to make laws makes the Legislative Branch the most likely candidate for encroaching on the power of the others. But Article II gives the President means

Second, no branch may abdicate its Appointments Clause duties. Congress, for example, may not authorize the appointment of a principal officer without Senate confirmation; nor may the President allow Congress or a lower level Executive Branch official to select a principal officer.[3]

To be sure, "power is of an encroaching nature" and more likely to be usurped than surrendered. The Federalist No. 48, at 332 (J. Madison). For this reason, our Appointments Clause cases (like our separation-of-powers cases generally) have typically addressed allegations of aggrandizement rather than abdication. See, *e. g., Buckley* v. *Valeo, supra; Springer* v. *Philippine Islands,* 277 U. S. 189 (1928); *Shoemaker* v. *United States,* 147 U. S. 282 (1893).[4] Nevertheless,

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of his own to encroach, and indeed we have been forced to invalidate Presidential attempts to usurp legislative authority, as the *Buckley* Court recognized: "The Court has held that the President may not execute and exercise legislative authority belonging only to Congress." *Buckley, supra,* at 123 (citing *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U. S. 579 (1952)).

[3] In *Freytag* v. *Commissioner,* 501 U. S. 868, 884 (1991), we observed that in the Appointments Clause the Framers limited the "diffusion" of the appointment power in order to "ensure that those who wielded it were accountable to political force and the will of the people." *Id.,* at 884. Depending on the means used to circumvent the Appointments Clause, "diffusion" can implicate either the anti-aggrandizement or the anti-abdication principle. If the full Congress creates a principal office and fills it, for example, it has adopted a more diffuse and less accountable mode of appointment than the Constitution requires; and it has violated the bar on aggrandizement. Cf. The Federalist No. 77, at 519 (explaining that the House of Representatives is too numerous a body to be involved in appointments). And if Congress, with the President's approval, authorizes a lower level Executive Branch official to appoint a principal officer, it again has adopted a more diffuse and less accountable mode of appointment than the Constitution requires; this time it has violated the bar on abdication.

[4] The theme of abdication has not been entirely absent, however. In *Morrison* v. *Olson,* 487 U. S. 654 (1988), the Court considered a challenge to a law authorizing appointment of an independent counsel by a three-judge panel and without Senate confirmation. Though the law was

"[t]he structural interests protected by the Appointments Clause are not those of any one branch of Government but of the entire Republic," and "[n]either Congress nor the Executive can agree to waive th[e] structural protection[s]" the Clause provides. *Freytag,* 501 U. S., at 880. The Appointments Clause forbids both aggrandizement and abdication.[5]

C

If military judges were principal officers, the method for selecting them, which is prescribed in legislation adopted by

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adopted by Congress and signed by the President, the Court said that the law would nevertheless violate the Appointments Clause if the independent counsel were a principal officer. See *id.,* at 671. If the independent counsel were such an officer, the law would represent an impermissible abdication by both Congress and the President of their Appointments Clause duties.

[5] Cf. *J. W. Hampton, Jr., & Co.* v. *United States,* 276 U. S. 394, 406 (1928) (Taft, C. J.) ("[I]t is a breach of the National fundamental law if Congress gives up its legislative power and transfers it to the President, or to the Judicial branch, or if by law it attempts to invest itself or its members with either executive power or judicial power"). As Chief Justice Taft's remark suggests, the ready analogy to the Appointments Clause's anti-abdication principle is what has been called "nondelegation doctrine." The Court has unanimously invalidated legislation in which Congress delegated "to others the essential legislative functions with which it is . . . vested," *A. L. A. Schechter Poultry Corp.* v. *United States,* 295 U. S. 495, 529 (1935); *id.,* at 553–554 (Cardozo, J., concurring), and it has read other statutes narrowly to avoid annulling them as excessive abdications of constitutional responsibility, see *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute,* 448 U. S. 607, 646 (1980) (plurality opinion); *National Cable Television Assn., Inc.* v. *United States,* 415 U. S. 336, 342 (1974). See also *Industrial Union Dept., supra,* at 672–676 (REHNQUIST, J., concurring in judgment) (discussing limits on the delegation of Congress's legislative power). Nondelegation doctrine has been criticized. But see J. Ely, Democracy and Distrust 131–134 (1980) (distinguishing nondelegation doctrine from less defensible theories invoked to strike down New Deal legislation). Barring Appointments Clause abdication strikes me as plainly less problematic, however, because the text of the Constitution describes with precision the nature of the branches' appointments powers.

Congress and signed by the President, would amount to an impermissible abdication by both political branches of their Appointments Clause duties. Military officers commissioned before 1968, though they received Presidential appointment and Senate confirmation, were chosen to fill inferior offices that did not carry the possibility of service as a military judge. If military judges were principal officers, the Military Justice Act of 1968 would have authorized the creation and filling of principal offices without any Presidential nomination or Senate confirmation to that principal office, or indeed to any principal office at all. Such a process would preclude the President, the Senate, and the public from playing the parts assigned to them, parts the Framers thought essential to preventing the exercise of arbitrary power and encouraging judicious appointments of principal officers.

The office to which military officers have been appointed since enactment of the 1968 Act includes the potential for service as a military judge. But that would be a sufficient response to petitioners' Appointments Clause objection only if military judges were inferior officers. Otherwise, the method for selecting military judges even from the ranks of post-1968 commissioned officers would reflect an abdication of the political branches' Appointments Clause duties with respect to principal officers. Admittedly, the degree of abdication would not be as extreme as in the prior setting, for the President and Senate are theoretically aware that each officer nominated and confirmed may serve as a military judge. Judging by the purposes of the Appointments Clause, however, this difference is immaterial. It cannot seriously be contended that in confirming the literally tens of thousands of military officers each year the Senate would, or even could, adequately focus on the remote possibility that a small number of them would eventually serve as military judges.[6] And the method for appointing military judges allows the President no formal role at all in the selection of the particular individuals who will actually serve in those positions. This process likewise deprives the public of any realistic ability to hold easily identifiable elected officials to account for bad appointments. Thus while, as the Court explains, see *ante,* at 171–172, Congress has certainly attempted to create a single military office that includes the potential of service as a military judge, I believe the Appointments Clause forbids the creation of such a single office that combines inferior- and principal-officer roles, thereby disregarding the special treatment the Constitution requires for the appointment of principal officers. For these reasons, if military judges were principal officers, the current scheme for appointing them would raise a serious Appointments Clause problem indeed, as the Solicitor General conceded at oral argument. See Tr. of Oral Arg. 30–31.

D

The argument that military judges are principal officers is far from frivolous. It proceeds by analogizing military judges to Article III circuit and district judges, who are principal officers,[7] and to Article I Tax Court judges, who *Frey-*

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[6] Writing in 1953, one observer pointed out that if each of the 49,956 nominations for military office sent to the Senate in 1949 "were considered for one minute . . . , it would require 832 hours to pass upon the nominations [or] an average of more than 5 hours each day that the Senate is in session." Harris, Advice and Consent of the Senate, at 331. This observer concluded that "Senate confirmation of military and naval officers has become for all practical purposes an empty formality." *Ibid.*

[7] It is true that the Court has never so held and that the Constitution refers to the lower federal courts as "inferior Courts." Art. III, § 1. But from the early days of the Republic "[t]he practical construction has uniformly been that [judges of the inferior courts] are not . . . inferior officers," 3 J. Story, Commentaries on the Constitution 456, n. 1 (1833), and I doubt many today would disagree. In *Freytag,* indeed, the Court as-

tag suggests are principal officers too (since, *Freytag* held, Tax Court judges may appoint inferior officers). In terms of the factors identified in *Morrison* v. *Olson* as significant to determining the Appointments Clause status of a federal officer, the office of military judge is not "limited in tenure," as that phrase was used in *Morrison* to describe "appoint[ment] essentially to accomplish a single task [at the end of which] the office is terminated." 487 U. S., at 672. Nor are military judges "limited in jurisdiction," as used in *Morrison* to refer to the fact that an independent counsel may investigate and prosecute only those individuals, and for only those crimes, within the scope of the jurisdiction granted by the special three-judge appointing court. See *ibid.* Over the cases before them, military judges would seem to be no more "limited [in] duties" than lower Article III or Tax Court judges. *Id.*, at 671. And though military judges are removable, the same is true of "most (if not all) principal officers in the Executive Branch." *Id.*, at 716 (SCALIA, J., dissenting) (emphasis deleted).

The argument that military judges are principal officers, however, is not without response. Since Article I military judges are much more akin to Article I Tax Court judges than lower Article III judges, the analogy to Tax Court judges proves nothing if Tax Court judges are inferior officers, which they may be. The history that justifies declaring the judges of "inferior" Article III courts to be principal officers is not available for Tax Court judges, and though *Freytag* holds that the Tax Court is a "Cour[t] of Law" that can appoint inferior officers, it may be that the Appointments

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sumed that lower federal judges were principal officers. See 501 U. S., at 884 (listing "ambassadors, ministers, heads of departments, and judges" as principal officers). But see Shartel, Federal Judges—Appointment, Supervision, and Removal—Some Possibilities Under the Constitution, 28 Mich. L. Rev. 485, 499–529 (1930) (arguing that lower federal judges should, and constitutionally can, be appointed by the Chief Justice).

Clause envisions appointment of some inferior officers by other inferior officers.

But even if Tax Court judges are principal officers, military trial judges compare poorly with them, because not only the legal rulings of military trial judges but also their factfinding and sentencing are subject to *de novo* scrutiny by the Courts of Military Review. See 10 U. S. C. § 866(c). Though the powers of Court of Military Review judges are correspondingly greater, they too are distinguishable from Tax Court judges. First, Tax Court judges are removable only for cause, see 26 U. S. C. § 7443(f), while Court of Military Review judges may be freely "detail[ed]" by the relevant Judge Advocate General to nonjudicial assignments.[8] See *ante*, at 171–172. Second, Tax Court judges serve fixed 15-year terms, see 26 U. S. C. § 7443(e), while Court of Military Review judges have no fixed term of office and typically serve for far less than 15 years.[9] See Brief for Petitioners 5 (military judges "often serve terms of two, three, or four years").

"The line between 'inferior' and 'principal' officers is one that is far from clear," *Morrison*, 487 U. S., at 671, and though there is a good deal of force to the argument that military judges, at least those on the Courts of Military Review, are principal officers, it is ultimately hard to say with any certainty on which side of the line they fall. The Court has never decided how to resolve doubt in this area; the *Morrison* Court did not address this issue since it understood the independent counsel to be "clearly" an inferior officer. *Ibid.* Forced to decide now, I agree with the approach offered by then-Judge Ginsburg in her Court of Appeals opinion in the independent-counsel case. "Where . . . the label that better fits an officer is fairly debatable, the fully rational congressional determination surely merits . . . tolerance." *In re Sealed Case,* 838 F. 2d 476, 532 (CADC) (dissenting opinion), rev'd *sub nom. Morrison* v. *Olson,* 487 U. S. 654 (1988). Since the chosen method for selecting military judges shows that neither Congress nor the President thought military judges were principal officers, and since in the presence of doubt deference to the political branches' judgment is appropriate, I conclude that military judges are inferior officers for purposes of the Appointments Clause.

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[8] According to the Government, "[t]he [Uniform Code of Military Justice] and the services' implementing regulations are carefully structured to ensure that military judges are independent and impartial." Brief for United States 42. This is offered to repel petitioners' due process claim, but it strengthens petitioners' Appointments Clause position. It does not strengthen it enough, however, for the fact remains that military judges are removable for a broad array of reasons.

[9] According to the Government, "military judges have the equivalent of tenure in the form of stable tours of duty." *Id.*, at 31. Again, though offered as a defense to petitioners' due process challenge, this aids petitioners' Appointments Clause argument. The fact remains, however, that the statute provides no fixed term of office for military judges.

II

Because the limits the Appointments Clause places on the creation and assignment of duties to inferior offices are respected here, for the reasons the Court and JUSTICE SCALIA give, and on the understanding that the Court addresses only the Appointments Clause's limits regarding inferior officers, I join the Court's opinion.

JUSTICE GINSBURG, concurring.

The care the Court has taken to analyze petitioners' claims demonstrates once again that men and women in the Armed Forces do not leave constitutional safeguards and judicial protection behind when they enter military service. Today's decision upholds a system of military justice notably more sensitive to due process concerns than the one prevailing through most of our country's history, when military justice was done without any requirement that legally trained officers preside or even participate as judges. Nevertheless, there has been no peremptory rejection of petitioners' pleas.

Instead, the close inspection reflected in the Court's opinion confirms:

> "[I]t is the function of the courts to make sure, in cases properly coming before them, that the men and women constituting our Armed Forces are treated as honored members of society whose rights do not turn on the charity of a military commander. . . . A member of the Armed Forces is entitled to equal justice under law not as conceived by the generosity of a commander but as written in the Constitution . . . ." *Winters* v. *United States*, 89 S. Ct. 57, 59–60, 21 L. Ed. 2d 80, 84 (1968) (Douglas, J., in chambers).

See also *Frontiero* v. *Richardson*, 411 U. S. 677 (1973); *Harmon* v. *Brucker*, 355 U. S. 579 (1958); *Crawford* v. *Cushman*, 531 F. 2d 1114 (CA2 1976).

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I think the Appointments Clause issue requires somewhat more analysis than the Court provides, and the Due Process Clause issue somewhat less.

I

As to the former: The Court states that these cases differ from *Shoemaker* v. *United States*, 147 U. S. 282 (1893), because, after the passage of the Military Justice Act of 1968, military judges could be selected from "hundreds or perhaps thousands of qualified commissioned officers," *ante*, at 174, so that there is no concern (as there was in *Shoemaker*, where a single incumbent held the office whose duties were enlarged) that "Congress was trying to both create an office and also select a particular individual to fill the office," *ante*, at 174. That certainly distinguishes *Shoemaker*, but I do not see why it leads to the Court's conclusion that *therefore* "germaneness" analysis need not be conducted here as it was in

Shoemaker (though the Court proceeds to conduct it anyway, *ante,* at 174–176).

Germaneness analysis must be conducted, it seems to me, whenever that is necessary to assure that the conferring of new duties does not violate the Appointments Clause. Violation of the Appointments Clause occurs not only when (as in *Shoemaker*) Congress may be aggrandizing *itself* (by effectively appropriating the appointment power over the officer exercising the new duties), but also when Congress, *without* aggrandizing itself, effectively lodges appointment power in any person other than those whom the Constitution specifies. Thus, "germaneness" is relevant whenever Congress gives power to confer new duties to anyone other than the few potential recipients of the appointment power specified in the Appointments Clause—*i. e.*, the President, the Courts of Law, and Heads of Departments.

The Judge Advocates General are none of these. Therefore, if acting as a military judge under the Military Justice Act of 1968 is nongermane to serving as a military officer, giving Judge Advocates General the power to appoint military officers to serve as military judges would violate the Appointments Clause, even if there were "hundreds or perhaps thousands" of individuals from whom the selections could be made. For taking on the nongermane duties of military judge would amount to assuming a new "Offic[e]" within the meaning of Article II, and the appointment to that office would have to comply with the strictures of Article II. I find the Appointments Clause not to have been violated in the present case, only because I agree with the Court's dictum that the new duties are germane.*

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*The further issues perceptively discussed in JUSTICE SOUTER's concurrence—namely, whether the Appointments Clause permits conferring principal-officer responsibilities upon an inferior officer in a manner other than that required for the appointment of a principal officer (and, if not, whether the responsibilities of a military judge are those of a principal officer)—were in my view wisely avoided by the Court, since they were

II

With respect to the Due Process Clause challenge, I think it neither necessary nor appropriate for this Court to pronounce whether "Congress has achieved an acceptable balance between independence and accountability," *ante,* at 180. As today's opinion explains, a fixed term of office for a military judge "has never been a part of the military justice tradition," *ante,* at 178. "Courts-martial . . . have been conducted in this country for over 200 years without the presence of a tenured judge," *ante,* at 179. Thus, in the Military Justice Act of 1968 the people's elected representatives achieved a "balance between independence and accountability" which, whether or not "acceptable" to five Justices of this Court, gave members of the military at least as much procedural protection, in the respects at issue here, as they enjoyed when the Fifth Amendment was adopted and have enjoyed ever since. That is enough, and to suggest otherwise arrogates to this Court a power it does not possess.

> "[A] process of law, which is not otherwise forbidden, must be taken to be due process of law, if it can show the sanction of settled usage both in England and in this country . . . . [That which], in substance, has been immemorially the actual law of the land . . . is due process of law." *Hurtado* v. *California,* 110 U. S. 516, 528 (1884).

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inadequately presented and not at all argued. The Petition for Certiorari said only: "There is considerable force to the argument that military appellate judges are 'superior' or 'principal' officers, in which case the President must appoint them with the advice and consent of the Senate. But in any event, ..." Pet. for Cert. 12. The only reference in petitioners' brief was the statement that "if military judges are principal officers, it is an even more serious transgression of the purposes of the Appointments Clause to have their original commissions substitute for an appointment to a principal office." Brief for Petitioners 15. As JUSTICE SOUTER's opinion demonstrates, the issues are complex; they should be resolved only after full briefing and argument.

As sometimes ironically happens when judges seek to deny the power of historical practice to restrain their decrees, see, *e. g., Burnham* v. *Superior Court of Cal., County of Marin,* 495 U. S. 604, 637–639 (1990) (Brennan, J., concurring in judgment), the present judgment makes no sense except as a consequence of historical practice. Today's opinion finds "an acceptable balance between independence and accountability" because the Uniform Code of Military Justice "protects against unlawful command influence by precluding a convening authority or any commanding officer from preparing or reviewing any report concerning the effectiveness, fitness, or efficiency of a military judge relating to his judicial duties"; because it "prohibits convening authorities from censuring, reprimanding, or admonishing a military judge '. . . with respect to any . . . exercise of . . . his functions in the conduct of the proceeding'"; and because a Judge Advocate General cannot decertify or transfer a military judge "based on the General's opinion of the appropriateness of the judge's findings and sentences." *Ante,* at 180, 181. But no one can suppose that similar protections against improper influence would suffice to validate a state criminal-law system in which felonies were tried by judges serving at the pleasure of the Executive. I am confident that we would not be satisfied with mere formal prohibitions in the civilian context, but would hold that due process demands the *structural* protection of tenure in office, which has been provided in England since 1700, see J. H. Baker, An Introduction to English Legal History 145–146 (2d ed. 1979), was provided in almost all the former English colonies from the time of the Revolution, see Ziskind, Judicial Tenure in the American Constitution: English and American Precedents, 1969 S. Ct. Rev. 135, 138–147, and is provided in all the States today, see National Center for State Courts, Conference of State Court Administrators, State Court Organization 1987, pp. 271–302 (1988). (It is noteworthy that one of the grievances recited against King George III in the Declaration of Independence was that "[h]e has made Judges dependent on his Will alone, for the tenure of their offices.")

Thus, while the Court's opinion says that historical practice is merely "a factor that must be weighed in [the] calculation," *ante*, at 179, it seems to me that the Court's judgment today makes the fact of a differing military tradition utterly conclusive. That is as it should be: "[N]o procedure firmly rooted in the practices of our people can be so 'fundamentally unfair' as to deny due process of law." *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 38 (1991) (SCALIA, J., concurring).

For these reasons, I concur in Parts I and II–A and concur in the judgment.

THUNDER BASIN COAL CO. *v.* REICH, SECRETARY OF LABOR, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 92–896. Argued October 5, 1993—Decided January 19, 1994

Petitioner mine operator's nonunion work force designated two employees of the United Mine Workers of America (UMWA) to serve as miners' representatives under 30 U. S. C. § 813(f). Claiming that the designations compromised its rights under the National Labor Relations Act (NLRA), petitioner refused to post information about the representatives as required by a regulation issued by the Department of Labor's Mine Safety and Health Administration (MSHA), 30 CFR § 40.4. Rather, petitioner filed suit in the District Court and obtained an injunction preventing enforcement of 30 CFR pt. 40. In reversing, the Court of Appeals held that district court jurisdiction was precluded by the administrative-review scheme of the Federal Mine Safety and Health Amendments Act of 1977, 30 U. S. C. § 801 *et seq.* (Mine Act or Act), under which challenges to enforcement measures are reviewed by the Federal Mine Safety and Health Review Commission and then by the appropriate court of appeals. The court rejected petitioner's contention that requiring it to challenge the MSHA's interpretation of 30 U. S. C. § 813(f) and 30 CFR pt. 40 through the statutory-review procedures would violate its rights under the Due Process Clause of the Fifth Amendment.

Held:

1. The Mine Act's statutory-review scheme precludes a district court from exercising subject-matter jurisdiction over a pre-enforcement challenge to the Act. Pp. 207–218.

(a) In cases involving delayed judicial review of final agency actions, this Court finds that Congress has allocated initial review to an administrative body where such intent is fairly discernible in the statutory scheme. Whether a statute is intended to preclude initial judicial review is determined from the statute's language, structure, and purpose, its legislative history, and whether the claims can be afforded meaningful review. P. 207.

(b) Although the Mine Act is facially silent about pre-enforcement claims, its comprehensive enforcement structure demonstrates that Congress intended to preclude challenges such as the present one. The statutory-review process does not distinguish between pre-enforcement and postenforcement challenges, but applies to all violations of the Act and its regulations. The Act expressly authorizes district court jurisdiction in only two provisions, which respectively empower the *Secretary* to enjoin habitual violations of health and safety standards and to coerce payment of civil penalties. Mine operators enjoy no corresponding right but must complain to the Commission and then to the court of appeals. Pp. 207–209.

(c) The Mine Act's legislative history confirms the foregoing interpretation by demonstrating that Congress intended to channel and streamline enforcement, directing ordinary challenges to a single review process. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 142–144, 155–156, distinguished. Pp. 209–212.

(d) Petitioner's claims are of the type that Congress intended to be addressed through the statutory-review process and can be meaningfully reviewed under the Mine Act. The NLRA claims at root require interpretation of the parties' rights and duties under § 813(f) and 30 CFR pt. 40, and as such arise under the Act and fall squarely within the expertise of the Commission, which recently has addressed the precise NLRA claims presented here. As for petitioner's due process claim, the general rule disfavoring constitutional adjudication by agencies is not mandatory, and is perhaps of less consequence where, as here, the reviewing body is not the agency itself but an independent commission established exclusively to adjudicate Mine Act disputes. The Commission has addressed constitutional questions in previous enforcement proceedings and, even if it had not, petitioner's claims could be meaningfully addressed in the Court of Appeals. Pp. 212–216.

2. The Court need not consider petitioner's contention that, because the absence of pre-enforcement declaratory relief before the Commission will subject petitioner to serious and irreparable harm, due process requires district court review. The record contains no evidence that petitioner will be subject to a serious prehearing deprivation if it complies with § 813(f) and 30 CFR pt. 40 by posting the designations. The potential for abuse of the miners' representative position appears limited, and petitioner has failed to demonstrate that any such abuse could not be remedied on an individual basis under the Mine Act. Nor will petitioner face any serious prehearing deprivation if it refuses to post the designations while challenging MSHA's interpretation. Although the Act's civil penalties unquestionably may become onerous if petitioner chooses not to comply, full judicial review is available before any penalty must be paid. Under the Act, petitioner is neither barred as a practical matter from all access to the courts nor put to a constitution-

ally intolerable choice between compliance and potent coercive penalties. Pp. 216–218.

969 F. 2d 970, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined, and in which SCALIA and THOMAS, JJ., joined except for Parts III–B, IV, and V. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post,* p. 219.

Wayne S. Bishop argued the cause for petitioner. With him on the briefs were *Charles W. Newcom, Stewart A. Block,* and *Thomas F. Linn.*

Deputy Solicitor General Wallace argued the cause for respondents. On the brief were *Solicitor General Days, Acting Deputy Solicitor General Kneedler, William K. Kelley, Allen H. Feldman,* and *Nathaniel I. Spiller.*[*]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case, we address the question whether the statutory-review scheme in the Federal Mine Safety and Health Amendments Act of 1977, 91 Stat. 1290, as amended, 30 U. S. C. § 801 *et seq.* (1988 ed. and Supp. IV) (Mine Act or Act), prevents a district court from exercising subject-matter jurisdiction over a pre-enforcement challenge to the Act. We hold that it does.

I

Congress adopted the Mine Act "to protect the health and safety of the Nation's coal or other miners." 30 U. S. C. § 801(g). The Act requires the Secretary of Labor or his representative to conduct periodic, unannounced health and safety inspections of the Nation's mines.[1] Section § 813(f) provides:

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[*] *Timothy M. Biddle* and *J. Michael Klise* filed a brief for the American Mining Congress et al. as *amici curiae* urging reversal.

Patrick K. Nakamura, George N. Davies, Robert H. Stropp, Jr., and *Mary Lu Jordan* filed a brief for the International Union, United Mine Workers of America, as *amicus curiae* urging affirmance.

> "[A] representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine . . . for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine."

Regulations promulgated under this section define a miners' representative as "[a]ny person or organization which represents two or more miners at a coal or other mine for the purposes of the Act." 30 CFR § 40.1(b)(1) (1993).

In addition to exercising these "walk-around" inspection rights under § 813(f), persons designated as representatives of the miners may obtain certain health and safety information[2] and promote health and safety enforcement.[3] Once the mine employees designate one or more persons as their representatives, the employer must post at the mine information regarding these designees. 30 CFR § 40.4.

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[1] Underground mines must be inspected at least four times a year, and surface mines must be inspected at least twice annually. 30 U. S. C. § 813(a).

[2] Miners' representatives are entitled to receive "a copy of any order, citation, notice, or decision" issued by the Secretary to the mine operator, 30 U. S. C. § 819(b), as well as copies of certain mine health and safety records available to the Secretary regarding employee exposure to toxic or other harmful agents, § 813(c), daily mine inspections, 30 CFR § 77.1713, and plans for mine evacuation, § 77.1101, roof control, § 75.220, and employee training, §§ 48.3 and 48.23.

[3] Miners' representatives, among other things, may inform the Secretary of mine hazards, 30 U. S. C. § 813(g)(2), request immediate additional inspections of the mine when a violation or imminent danger exists, § 813(g)(1), and participate in proceedings before the Federal Mine Safety and Health Review Commission, § 815(d). Representatives may request or challenge certain enforcement actions against a mine operator, §§ 815(d) and 817(e)(1), contest the time an operator is given to abate a Mine Act violation, § 815(d), and initiate proceedings to modify the application of health and safety standards, 30 CFR § 44.3.

The Secretary has broad authority to compel immediate compliance with Mine Act provisions through the use of mandatory civil penalties, discretionary daily civil penalties, and other sanctions.[4] Challenges to enforcement are reviewed by the Federal Mine Safety and Health Review Commission, 30 U. S. C. §§ 815 and 823, which is independent of the Department of Labor, and by the appropriate United States court of appeals, § 816.

II

Petitioner Thunder Basin Coal Company operates a surface coal mine in Wyoming with approximately 500 nonunion employees. In 1990, petitioner's employees selected two employees of the United Mine Workers of America (UMWA), who were not employees of the mine, to serve as their miners' representatives pursuant to § 813(f). Petitioner did not post the information regarding the miners' representatives as required by 30 CFR § 40.4, but complained to the Mine Safety and Health Administration (MSHA)[5] that the designation compromised its rights under the National Labor Relations Act (NLRA). App. 31. The MSHA district manager responded with a letter instructing petitioner to post the miners' representative designations. *Id.*, at 49.

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[4] The Secretary must issue a citation and recommend assessment of a civil penalty of up to $50,000 against any mine operator believed to have violated the Act. 30 U. S. C. §§ 814(a), 815(a), and 820(a). If an operator fails to abate the violation within the time allotted, the Secretary may assess additional daily civil penalties of up to $5,000 per day pending abatement. § 820(b). The Secretary's representative also may issue a "withdrawal order," directing all individuals to withdraw from the affected mine area, §§ 814(b) and (d), or pursue criminal penalties, § 820(d).

[5] The MSHA is established within the Department of Labor and represents the Secretary in enforcing the Mine Act. 91 Stat. 1319, 29 U. S. C. § 557a.

Rather than post the designations and before receiving the MSHA letter, petitioner filed suit in the United States District Court for the District of Wyoming for pre-enforcement injunctive relief. *Id.*, at 6. Petitioner contended that the designation of nonemployee UMWA "representatives" violated the principles of collective-bargaining representation under the NLRA as well as the company's NLRA rights to exclude union organizers from its property. *Id.*, at 9–10. Petitioner argued then, as it does here, that deprivation of these rights would harm the company irreparably by "giv[ing] the union organizing advantages in terms of access, personal contact and knowledge that would not be available under the labor laws, as well as enhanced credibility flowing from the appearance of government imprimatur." Reply Brief for Petitioner 14.

Petitioner additionally alleged that requiring it to challenge the MSHA's interpretation of 30 U. S. C. §813(f) and 30 CFR pt. 40 through the statutory-review process would violate the Due Process Clause of the Fifth Amendment, since the company would be forced to choose between violating the Act and incurring possible escalating daily penalties,[6] or, on the other hand, complying with the designations and suffering irreparable harm. The District Court enjoined respondents from enforcing 30 CFR pt. 40, finding that petitioner had raised serious questions going to the merits and that it might face irreparable harm.[7]

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[6] Petitioner relied for this proposition on a similar case in which a mine operator refused to post the designation of a UMWA employee, a citation was issued, and the MSHA ordered abatement within 24 hours and threatened to impose daily civil penalties. See *Kerr-McGee Coal Corp.* v. *Secretary*, 15 F. M. S. H. R. C. 352 (1993), appeal pending, No. 93–1250 (CADC). Kerr-McGee complied but contested the citation. An administrative law judge rejected the operator's claim, and the Commission affirmed, holding that §813(f) did not violate the NLRA. 15 F. M. S. H. R. C., at 362–363. The Commission eventually fined Kerr-McGee a total of $300 for its noncompliance.

The Court of Appeals for the Tenth Circuit reversed, holding that the Mine Act's comprehensive enforcement and administrative-review scheme precluded district court jurisdiction over petitioner's claims. 969 F. 2d 970 (1992). The court stated:

> "[T]he gravamen of Thunder Basin's case is a dispute over an anticipated citation and penalty. . . . Operators may not avoid the Mine Act's administrative review process simply by filing in a district court before actually receiving an anticipated citation, order, or assessment of penalty." *Id.*, at 975.

To hold otherwise, the court reasoned, "would permit preemptive strikes that could seriously hamper effective enforcement of the Act, disrupting the review scheme Congress intended." *Ibid.* The court also concluded that the Mine Act's review procedures adequately protected petitioner's due process rights. *Ibid.*

We granted certiorari on the jurisdictional question, 507 U. S. 971 (1993), to resolve a claimed conflict with the Court of Appeals for the Sixth Circuit. See *Southern Ohio Coal Co.* v. *Donovan,* 774 F. 2d 693 (1985), amended, 781 F. 2d 57 (1986).

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[7] App. to Pet. for Cert. A–24. Before the Court of Appeals ruled on the appeal from the preliminary injunction, the District Court held a trial and entered a permanent injunction in favor of petitioner. See *Thunder Basin Coal Co.* v. *Martin,* No. 91–CV–0050–B (D. Wyo., Mar. 13, 1992). The Court of Appeals subsequently denied petitioner's motion to stay appeal of the preliminary injunction and to consolidate the two cases, finding conclusive its holding that the District Court lacked jurisdiction. 969 F. 2d 970, 973, n. 3 (CA10 1992).

III

In cases involving delayed judicial review[8] of final agency actions, we shall find that Congress has allocated initial review to an administrative body where such intent is "fairly discernible in the statutory scheme." *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 351 (1984), quoting *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 157 (1970). Whether a statute is intended to preclude initial judicial review is determined from the statute's language, structure, and purpose, its legislative history, *Block*, 467 U. S., at 345, and whether the claims can be afforded meaningful review. See, *e. g., Board of Governors, FRS* v. *MCorp Financial, Inc.*, 502 U. S. 32 (1991); *Whitney Nat. Bank in Jefferson Parish* v. *Bank of New Orleans & Trust Co.*, 379 U. S. 411 (1965).

A

Applying this analysis to the review scheme before us, we conclude that the Mine Act precludes district court jurisdiction over the pre-enforcement challenge made here. The Act establishes a detailed structure for reviewing violations of "any mandatory health or safety standard, rule, order, or regulation promulgated" under the Act. § 814(a). A mine operator has 30 days to challenge before the Commission any citation issued under the Act, after which time an uncontested order becomes "final" and "not subject to review by any court or agency." §§ 815(a) and (d). Timely challenges are heard before an administrative law judge (ALJ),

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[8] Because court of appeals review is available, this case does not implicate " 'the strong presumption that Congress did not mean to prohibit all judicial review.' " *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 672 (1986), quoting *Dunlop* v. *Bachowski*, 421 U. S. 560, 567 (1975).

§ 823(d)(1), with possible Commission review.[9] Only the Commission has authority actually to impose civil penalties proposed by the Secretary, § 820(i), and the Commission reviews all proposed civil penalties *de novo* according to six criteria.[10] The Commission may grant temporary relief pending review of most orders, § 815(b)(2), and must expedite review where necessary, § 815(d).

Mine operators may challenge adverse Commission decisions in the appropriate court of appeals, § 816(a)(1), whose jurisdiction "shall be exclusive and its judgment and decree shall be final" except for possible Supreme Court review, *ibid.* The court of appeals must uphold findings of the Commission that are substantially supported by the record, *ibid.*, but may grant temporary relief pending final determination of most proceedings, § 816(2).

Although the statute establishes that the Commission and the courts of appeals have exclusive jurisdiction over challenges to agency enforcement proceedings, the Act is facially silent with respect to pre-enforcement claims. The structure of the Mine Act, however, demonstrates that Congress intended to preclude challenges such as the present one. The Act's comprehensive review process does not distinguish between pre-enforcement and postenforcement challenges, but applies to all violations of the Act and its regulations. § 814(a). Contrary to petitioner's suggestion, Reply Brief for Petitioner 3, actions before the Commission are initiated not by the Secretary but by a mine operator who claims to be aggrieved. See § 815(a). The Act expressly authorizes district court jurisdiction in only two provisions, §§ 818(a) and 820(j), which respectively empower the *Secretary* to enjoin habitual violations of health and safety standards and to coerce payment of civil penalties. Mine operators enjoy no corresponding right[11] but are to complain to the Commission and then to the court of appeals.

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[9] 30 U. S. C. § 823(d)(2). The Commission exercises discretionary review over any case involving, among others, a "substantial question of law, policy or discretion," § 823(d)(2)(A)(ii)(IV), and may review on its own initiative any decision "contrary to law or Commission policy" or in which "a novel question of policy has been presented," § 823(d)(2)(B). Any ALJ decision not granted review by the Commission within 40 days becomes a "final decision of the Commission." § 823(d)(1).

[10] The statutory criteria are "the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance." 30 U. S. C. § 820(i).

B

The legislative history of the Mine Act confirms this interpretation. At the time of the Act's passage, at least 1 worker was killed and 66 miners were disabled every working day in the Nation's mines. See S. Rep. No. 95–181, p. 4 (1977), Legislative History of the Federal Mine Safety and Health Act of 1977 (Committee Print prepared for the Subcommittee on Labor of the Senate Committee on Human Resources), Ser. No. 95–2, p. 592 (1978) (Leg. Hist.). Frequent and tragic mining disasters testified to the ineffectiveness of then-existing enforcement measures.[12] Under existing legislation,[13] civil penalties were not always mandatory and were too low to compel compliance, and enforcement was hobbled by a cumbersome review process.[14]

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[11] Petitioner points to § 960, which provides that "no justice, judge, or court of the United States shall" enjoin enforcement of interim mandatory health and safety standards, and to § 815(a), which provides that citations not contested in a timely manner are "not subject to review by any court or agency," as evidence that Congress expressly prohibited federal jurisdiction when it so intended. Petitioner misconstrues § 960, which bars a certain form of relief but says nothing about the appropriate forum for a challenge. Section 815(a) similarly provides only that failure timely to challenge a citation precludes review before the Commission and court of appeals; it does not suggest that district court review is otherwise available. In light of the Act's other provisions granting district courts jurisdiction over challenges brought only by the Secretary, §§ 818(a) and 820(j), petitioner's argument based on the maxim *expressio unius est exclusio alterius* is unpersuasive.

Congress expressed particular concern that under the previous Coal Act mine operators could contest civil-penalty assessments *de novo* in federal district court once the administrative review process was complete, thereby "seriously hamper[ing] the collection of civil penalties."[15] Concluding

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[12] In February 1972, for example, 125 persons were killed when a mine dam broke at Buffalo Creek in West Virginia. Leg. Hist. 592. See generally G. Stern, The Buffalo Creek Disaster (1976). Ninety-one miners died of carbon monoxide asphyxiation in May 1972 at the Sunshine Silver Mine in Idaho. In July 1972, nine miners were killed in a mine fire in Blacksville, W. Va., and in March 1976, 23 miners and 3 federal inspectors died in methane gas explosions at the Scotia coal mine in Kentucky. *Ibid.*

The House and Senate Committee Reports observed that these accidents resulted from hazards that were remediable and that in many cases already had been the object of repeated enforcement efforts. See generally Leg. Hist. 362, 371, 592–593, 637. The 1972 Buffalo Creek disaster, for example, occurred after the mine had been assessed over $1.5 million in penalties, "not one cent of which had been paid." *Id.*, at 631. Sixty-two ventilation violations were noted in the two years prior to the Scotia gas explosions, but the imposed penalties failed to coerce compliance. *Id.*, at 629–630.

[13] The 1977 Mine Act renamed and amended the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), 91 Stat. 1290, and repealed the Federal Metal and Nonmetallic Mine Safety Act of 1966, *id.*, at 1322.

[14] The Senate Report found it "unacceptable that years after enactment of these mine safety laws . . . [m]ine operators still find it cheaper to pay minimal civil penalties than to make the capital investments necessary to adequately abate unsafe or unhealthy conditions, and there is still no means by which the government can bring habitual and chronic violators of the law into compliance." Leg. Hist. 592; see also *id.*, at 597.

[15] *Id.*, at 633. The Senate Report explained:

"The Committee firmly believes that to effectively induce compliance, the penalty must be paid by the operator in reasonably close time proximity to the occurrence of the underlying violation. A number of problems with the current penalty assessment and collection system interfere with this. Final determinations of penalties are not self-enforcing, and operathat "rapid abatement of violations is essential for the protection of miners," Leg. Hist. 618, Congress accordingly made improved penalties and enforcement measures a primary goal of the Act.

The 1977 Mine Act thus strengthened and streamlined health and safety enforcement requirements. The Act authorized the Secretary to compel payment of penalties and to enjoin habitual health and safety violators in federal district court. See Leg. Hist. 627; 30 U. S. C. §§820(j) and 818(a). Assessment of civil penalties was made mandatory for all mines, and Congress expressly eliminated the power of a mine operator to challenge a final penalty assessment *de novo* in district court. Cf. *Whitney Nat. Bank*, 379 U. S., at 420 (that "Congress rejected a proposal for a *de novo* review in the district courts of Board decisions" supports a finding of district court preclusion).[16] We consider the legislative history and these amendments to be persuasive evidence that Congress intended to direct ordinary challenges under the Mine Act to a single review process.

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tors have the right to seek judicial review of penalty determinations, and may request a de novo trial on the issues in the U. S. District Courts. This encourages operators who are not pre-disposed to voluntarily pay assessed penalties to pursue cases through the elaborate administrative procedure and then to seek redress in the Courts. Since the District Courts are still reluctant to schedule trials on these cases, and the Department of Justice has been reluctant to pursue such cases in the courts, the matters generally languish at that stage, and the penalties go uncollected." *Id.*, at 604.

[16] The Senate Report's citation, see Leg. Hist. 602, of *Bituminous Coal Operators' Assn.* v. *Secretary of Interior*, 547 F. 2d 240 (CA4 1977) (holding that pre-enforcement district court challenges were not precluded under the 1969 Coal Act), does not support petitioner's claim that Congress intended to preserve district court jurisdiction over pre-enforcement suits. That case was cited for an unrelated proposition and does not constitute a "settled judicial construction" that Congress presumptively preserved. *United States* v. *Powell*, 379 U. S. 48, 55, n. 13 (1964); see also *Keene Corp.* v. *United States*, 508 U. S. 200, 207–209 (1993).

Abbott Laboratories v. *Gardner,* 387 U. S. 136 (1967), is not to the contrary. In that case, this Court held that statutory review of certain provisions of the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040, as amended by the Drug Amendments of 1962, 76 Stat. 780, 21 U. S. C. § 301 *et seq.,* did not preclude district court jurisdiction over a preenforcement challenge to regulations promulgated under separate provisions of that Act. In so holding, the Court found that the presence of a statutory saving clause, see 387 U. S., at 144, and the statute's legislative history demonstrated "rather conclusively that the specific review provisions were designed to give an additional remedy and not to cut down more traditional channels of review," *id.,* at 142. It concluded that Congress' primary concern in adopting the administrative-review procedures was to supplement review of specific agency determinations over which traditional forms of review might be inadequate. *Id.,* at 142–144. Contrary to petitioner's contentions, no comparable statutory language or legislative intent is present here. Indeed, as discussed above, the Mine Act's text and legislative history suggest precisely the opposite. The prospect that federal jurisdiction might thwart effective enforcement of the statute also was less immediate in *Abbott Laboratories,* since the *Abbott* petitioners did not attempt to stay enforcement of the challenged regulation pending judicial review, as petitioner did here. *Id.,* at 155–156.

C

We turn to the question whether petitioner's claims are of the type Congress intended to be reviewed within this statutory structure. This Court previously has upheld district court jurisdiction over claims considered "wholly 'collateral'" to a statute's review provisions and outside the agency's expertise, *Heckler* v. *Ringer,* 466 U. S. 602, 618 (1984), discussing *Mathews* v. *Eldridge,* 424 U. S. 319 (1976), particularly where a finding of preclusion could foreclose all meaningful judicial review. See *Traynor* v. *Turnage,* 485 U. S. 535, 544–545 (1988) (statutory prohibition of all judicial review of Veterans Administration benefits determinations did not preclude jurisdiction over an otherwise unreviewable collateral statutory claim); *Bowen* v. *Michigan Academy of Family Physicians,* 476 U. S. 667, 678–680 (1986); *Johnson* v. *Robison,* 415 U. S. 361, 373–374 (1974); *Oestereich* v. *Selective Serv. System Local Bd. No. 11,* 393 U. S. 233, 237–238 (1968); *Leedom* v. *Kyne,* 358 U. S. 184, 190 (1958) (upholding injunction of agency action where petitioners had "no other means, within their control . . . to protect and enforce that right"). In *Mathews* v. *Eldridge,* for example, it was held that 42 U. S. C. § 405(g), which requires exhaustion of administrative remedies before the denial of Social Security disability benefits may be challenged in district court, was not intended to bar federal jurisdiction over a due process challenge that was "entirely collateral" to the denial of benefits, 424 U. S., at 330, and where the petitioner had made a colorable showing that full postdeprivation relief could not be obtained, *id.,* at 331.

McNary v. *Haitian Refugee Center, Inc.,* 498 U. S. 479 (1991), similarly held that an alien could bring a due process challenge to Immigration and Naturalization Service amnesty determination procedures, despite an Immigration and Nationality Act provision expressly limiting judicial review of individual amnesty determinations to deportation or exclusion proceedings. See 8 U. S. C. § 1160(e). This Court held that the statutory language did not evidence an intent to preclude broad "pattern and practice" challenges to the program, 498 U. S., at 494, 497, and acknowledged that "if not allowed to pursue their claims in the District Court, respondents would not as a practical matter be able to obtain meaningful judicial review," *id.,* at 496.

An analogous situation is not presented here. Petitioner pressed two primary claims below: that the UMWA designation under § 813(f) violates the principles of collective bargaining under the NLRA and petitioner's right "to exclude nonemployee union organizers from [its] property," *Lechmere, Inc.* v. *NLRB*, 502 U. S. 527, 532 (1992), and that adjudication of petitioner's claims through the statutory-review provisions will violate due process by depriving petitioner of meaningful review. Petitioner's statutory claims at root require interpretation of the parties' rights and duties under § 813(f) and 30 CFR pt. 40, and as such arise under the Mine Act and fall squarely within the Commission's expertise. The Commission, which was established as an independent-review body to "develop a uniform and comprehensive interpretation" of the Mine Act, Hearing on the Nomination of Members of the Federal Mine Safety and Health Review Commission before the Senate Committee on Human Resources, 95th Cong., 2d Sess., 1 (1978), has extensive experience interpreting the walk-around rights[17] and recently addressed the precise NLRA claims presented here.[18] Although the Commission has no particular expertise in construing statutes other than the Mine Act, we conclude that exclusive review before the Commission is appropriate since "agency expertise [could] be brought to bear on" the statutory questions presented here. *Whitney Nat. Bank*, 379 U. S., at 420.

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[17] See *Cyprus Empire Corp.* v. *Secretary,* 15 F. M. S. H. R. C. 10 (1993) (striking workers' entitlement to walk-around representation); *Council of Southern Mountains, Inc.* v. *Martin County Coal Corp.*, 6 F. M. S. H. R. C. 206 (1984), aff'd *sub nom. Council of Southern Mountains, Inc.* v. *FMSHRC,* 751 F. 2d 1418 (CADC 1985) (nonemployee miners' representative entitlement to monitor training courses at the mine); *Magma Copper Co.* v. *Secretary,* 1 F. M. S. H. R. C. 1948 (1979), aff'd in part, 645 F. 2d 694 (CA9 1981) (compensation for multiple miners' representatives).

[18] See *Kerr-McGee Coal Corp.* v. *Secretary,* 15 F. M. S. H. R. C. 352 (1993). The Commission concluded that there was "no basis" for limiting the designation of miners' representatives to "member[s] of a union that also represents the miners for collective bargaining purposes under the NLRA," *id.*, at 361, since the "discrete safety and health purpose of the Mine Act . . . . render these NLRA principles inapplicable here," *id.*, at 362. The Commission noted that the preamble to 30 CFR pt. 40 expressly disapproves incorporation of the NLRA's majoritarian representation principles, 15 F. M. S. H. R. C., at 359, and n. 8, and rejected petitioner's property-rights claim, since "*Lechmere* does not reverse walkaround law as it has developed under the Mine Act." *Id.*, at 362. Cf. *Emery Mining Corp.* v. *Secretary,* 10 F. M. S. H. R. C. 276 (1988), aff'd in part and rev'd in part *sub nom. Utah Power & Light Co.* v. *Secretary of Labor,* 897 F. 2d

As for petitioner's constitutional claim, we agree that "[a]djudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies," *Johnson* v. *Robison*, 415 U. S., at 368, quoting *Oestereich* v. *Selective Serv. System Local Bd. No. 11*, 393 U. S., at 242 (Harlan, J., concurring in result); accord, *Califano* v. *Sanders*, 430 U. S. 99, 109 (1977). This rule is not mandatory, however, and is perhaps of less consequence where, as here, the reviewing body is not the agency itself but an independent Commission established exclusively to adjudicate Mine Act disputes. See *Secretary* v. *Richardson*, 3 F. M. S. H. R. C. 8, 18–20 (1981). The Commission has addressed constitutional questions in previous enforcement proceedings.[19] Even if this were not the case, however, petitioner's statutory and constitutional claims here can be meaningfully addressed in the Court of Appeals.[20]

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447 (CA10 1990) (construing the Mine Act in light of the NLRA and concluding that a miners' representative may be a nonemployee).

[19] See *Secretary* v. *Jim Walter Resources, Inc.*, 9 F. M. S. H. R. C. 1305, 1306–1307 (1987), aff'd, 920 F. 2d 738 (CA11 1990) (due process); *Secretary* v. *Alabama By-Products Corp.*, 4 F. M. S. H. R. C. 2128, 2129–2130 (1982) (vagueness); *Secretary* v. *Richardson*, 3 F. M. S. H. R. C. 8, 21–28 (1981) (equal protection). *Kaiser Coal Corp.* v. *Secretary*, 10 F. M. S. H. R. C. 1165 (1988), does not suggest otherwise, but simply held that declaratory relief from the Commission was unavailable for a question already under consideration in the Court of Appeals.

[20] Cf. *Weinberger* v. *Salfi*, 422 U. S. 749, 762 (1975). This case thus does not present the "serious constitutional question" that would arise if an agency statute were construed to preclude all judicial review of a constitutional claim. See *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 681, n. 12 (1986).

We conclude that the Mine Act's comprehensive enforcement structure, combined with the legislative history's clear concern with channeling and streamlining the enforcement process, establishes a "fairly discernible" intent to preclude district court review in the present case. See *Block* v. *Community Nutrition Institute,* 467 U. S., at 351. Petitioner's claims are "pre-enforcement" only because the company sued before a citation was issued, and its claims turn on a question of statutory interpretation that can be meaningfully reviewed under the Mine Act. Had petitioner persisted in its refusal to post the designation, the Secretary would have been required to issue a citation and commence enforcement proceedings. See 30 U. S. C. §§815(a) and 820 (1988 ed. and Supp. IV). Nothing in the language and structure of the Act or its legislative history suggests that Congress intended to allow mine operators to evade the statutory-review process by enjoining the Secretary from commencing enforcement proceedings, as petitioner sought to do here. To uphold the District Court's jurisdiction in these circumstances would be inimical to the structure and the purposes of the Mine Act.

IV

Petitioner finally contends, in the alternative, that due process requires district court review because the absence of pre-enforcement declaratory relief before the Commission will subject petitioner to serious and irreparable harm. We need not consider this claim, however, because neither compliance with, nor continued violation of, the statute will subject petitioner to a serious prehearing deprivation.

The record before us contains no evidence that petitioner will be subject to serious harm if it complies with 30 U. S. C. §813(f) and 30 CFR pt. 40 by posting the designations, and the potential for abuse of the miners' representative position appears limited. As the district manager of the MSHA stated to petitioner, designation as a miners' representative does not convey "an uncontrolled access right to the mine property to engage in any activity that the miners' representative wants." App. 49. Statutory inspections of petitioner's mine need occur only twice annually and are conducted with representatives of the Secretary and the operator. Because the miners' representative cannot receive advance notice of an inspection, the ability of the nonemployee UMWA designees to exercise these limited walkaround rights is speculative. See Tr. of Oral Arg. 31; Brief for International Union, UMWA, as *Amicus Curiae* 11, n. 2. Although it is possible that a miners' representative could abuse his privileges, we agree with the Court of Appeals that petitioner has failed to demonstrate that such abuse, entirely hypothetical on the record before us, cannot be remedied on an individual basis under the Mine Act. See 969 F. 2d, at 976–977, and n. 6; *Utah Power & Light Co.* v. *Secretary of Labor*, 897 F. 2d 447, 452 (CA10 1990); *Kerr-McGee Coal Corp.* v. *Secretary*, 15 F. M. S. H. R. C. 352, 361–362 (1993).[21]

Nor will petitioner face any serious prehearing deprivation if it refuses to post the designations while challenging the Secretary's interpretation.[22] Although the Act's civil penalties unquestionably may become onerous if petitioner chooses not to comply, the Secretary's penalty assessments become final and payable only after full review by both the Commission and the appropriate court of appeals. 30 U. S. C. §§ 820(i) and 816. A mine operator may request that the Commission expedite its proceedings, § 815(d), and temporary relief of certain orders is available from the Commission and the court of appeals. §§ 815(b)(2) and 816(a)(2). Thus, this case does not present the situation confronted in *Ex parte Young,* 209 U. S. 123, 148 (1908), in which the practical effect of coercive penalties for noncompliance was to foreclose all access to the courts. Nor does this approach a situation in which compliance is sufficiently onerous and coercive penalties sufficiently potent that a constitutionally intolerable choice might be presented.

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[21] Without addressing the merits of petitioner's underlying claim, we note that petitioner appears to misconstrue *Lechmere, Inc.* v. *NLRB*, 502 U. S. 527 (1992). The right of employers to exclude union organizers from their private property emanates from state common law, and while this right is not superseded by the NLRA, nothing in the NLRA expressly protects it. To the contrary, this Court consistently has maintained that the NLRA may entitle union employees to obtain access to an employer's property under limited circumstances. See *id.*, at 537; *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 112 (1956). Moreover, in a related context, the Court has held that Congress' interest in regulating the mining industry may justify limiting the private property interests of mine operators. See *Donovan* v. *Dewey*, 452 U. S. 594 (1981) (unannounced Mine Act inspections do not violate the Fourth Amendment).

V

We conclude that the Mine Act's administrative structure was intended to preclude district court jurisdiction over petitioner's claims and that those claims can be meaningfully reviewed through that structure consistent with due process.[23] The judgment of the Court of Appeals is affirmed.

It is so ordered.

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[22] We note that petitioner expressly disavows any abstract challenge to the Mine Act's statutory review scheme, but limits its due process claim to the present situation where the Act allegedly requires petitioner to relinquish an independent statutory right. See Brief for Petitioner 31, n. 31.

[23] Because we have resolved this dispute on statutory preclusion grounds, we do not reach the parties' arguments concerning final agency action, a cause of action, ripeness, and exhaustion.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I join all except Parts III–B, IV, and V of the Court's opinion. The first of these consists of a discussion of the legislative history of the Federal Mine Safety and Health Amendments Act of 1977, 30 U. S. C. § 801 *et seq.* (1988 ed. and Supp. IV), which is found to "confir[m]," *ante*, at 209, the Court's interpretation of the statute. I find that discussion unnecessary to the decision. It serves to maintain the illusion that legislative history is an important factor in this Court's deciding of cases, as opposed to an omnipresent makeweight for decisions arrived at on other grounds. See *Wisconsin Public Intervenor* v. *Mortier*, 501 U. S. 597, 617, 621 (1991) (SCALIA, J., concurring in judgment).

As to Part V: The only additional analysis introduced in that brief section is the proposition that "the parties' arguments concerning final agency action, a cause of action, ripeness, and exhaustion" need not be reached "[b]ecause we have resolved this dispute on statutory preclusion grounds." *Ante*, at 218, n. 23. That is true enough as to the claims disposed of in Part III, but quite obviously not true as to the constitutional claim disposed of in Part IV, which is rejected not on preclusion grounds but on the merits.* The alleged impediments to entertaining that claim must be considered. It suffices here to say that I do not consider them valid.

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*I understand Part IV to be dealing with the issue of whether the exclusion of judicial review adjudged in Part III is constitutional. Even though, as Part III has determined, the Federal Mine Safety and Health Amendments Act of 1977 precludes judicial review of the agency action that is the subject of the present suit, the district court retains jurisdiction under the grant of general federal-question jurisdiction, see 28 U. S. C. § 1331, for the limited purpose of determining whether that preclusion *itself* is unconstitutional and hence ineffective. Cf. *Ng Fung Ho* v. *White*, 259 U. S. 276, 282–285 (1922) (permitting habeas corpus review of deportation orders); *Battaglia* v. *General Motors Corp.*, 169 F. 2d 254, 257 (CA2 1948).

And finally, as to Part IV: The Court holds that the preclusion of review is constitutional "because neither compliance with, nor continued violation of, the statute will subject petitioner to a serious prehearing deprivation." *Ante,* at 216. I presume this means that any such deprivation will be *de minimis* (since I know of no doctrine which lets stand unconstitutional injury that is more than *de minimis* but short of some other criterion of gravity). It seems to me, however, that compliance with the inspection regulations *will* cause petitioner more than *de minimis* harm (assuming, as we must in evaluating the harm resulting from compliance, that petitioner is correct on the merits of his claims). Compliance will compel the company to allow union officials to enter its premises (and in a position of apparent authority, at that), notwithstanding its common-law right to exclude them, cf. *Lechmere, Inc.* v. *NLRB,* 502 U. S. 527, 534–535 (1992). And compliance will provide at least some confidential business information to officers of the union. (The UMWA's contention, on which the Court relies, that it is "speculative" whether a nonemployee miners' representative will be able to accompany the walk-arounds means only that such a representative may not *always* be able to do so. He will surely *often* be able to do so, since the statute *requires* that he "be given an opportunity to accompany" the inspector. 30 U. S. C. § 813(f).)

In my view, however, the preclusion of pre-enforcement judicial review is constitutional *whether or not* compliance produces irreparable harm—at least if a summary penalty does not cause irreparable harm (*e. g.,* if it is a recoverable summary fine) or if judicial review *is* provided before a penalty for *non*compliance can be imposed. (The latter condition exists here, as it does in most cases, because the penalty for noncompliance can only be imposed in court.) Were it otherwise, the availability of pre-enforcement challenges would have to be the rule rather than the exception, since complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs. Petitioner's claim is that the imposition of a choice between (1) complying with what the Government says to be the law, and (2) risking potential penalties (without a prior opportunity to challenge the law in district court) denies due process. This is similar to the constitutional challenge brought in the line of cases beginning with *Ex parte Young*, 209 U. S. 123 (1908), but with one crucial difference. As the Court notes, see *ante*, at 217–218, petitioner, unlike the plaintiff in *Young*, had the option of complying *and then* bringing a judicial challenge. The constitutional defect in *Young* was that the dilemma of either obeying the law and thereby forgoing any possibility of judicial review, or risking "enormous" and "severe" penalties, effectively cut off all access to the courts. See 209 U. S., at 146–148. That constitutional problem does not exist here, nor does any other of which I am aware. Cf. *Bailey* v. *George*, 259 U. S. 16, 19 (1922). I would decide the second constitutional challenge (Part IV) on the simple grounds that the company can obtain judicial review if it complies with the agency's request, and can obtain presanction judicial review if it does not.

SCHIRO *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 92–7549. Argued November 1, 1993—Decided January 19, 1994

At petitioner Schiro's state court trial on three counts of murder—including, in Count I, the charge that he "knowingly" killed the victim, and, in Count II, that he killed her while committing rape—the jury returned a verdict of guilty on Count II, but left the remaining verdict sheets blank. The trial court imposed the death sentence, finding that the State had proved the statutory aggravating factor that Schiro "committed the murder by intentionally killing the victim while committing or attempting to commit . . . rape," and that no mitigating circumstances had been established. After twice affirming the sentence in state proceedings, the Indiana Supreme Court again affirmed on remand from the Federal District Court in habeas proceedings, rejecting Schiro's argument that the jury's failure to convict him on the Count I murder charge operated as an acquittal of intentional murder, and that the Double Jeopardy Clause prohibited the use of the intentional murder aggravating circumstance for sentencing purposes. The Federal Court of Appeals accepted this conclusion in affirming the District Court's denial of habeas relief, ruling also that collateral estoppel was not implicated since Schiro had to show that the jury's verdict actually and necessarily determined the issue he sought to foreclose and his Count II conviction did not act as an acquittal with respect to the Count I murder charge.

Held:

1. Although this Court undoubtedly has the discretion to reach the State's argument that granting relief to Schiro would require the retroactive application of a new rule, in violation of the principle announced in *Teague* v. *Lane,* 489 U. S. 288, the Court will not do so in the present circumstances, where the State did not raise the *Teague* argument either in the lower courts or in its brief in opposition to the petition for a writ of certiorari. Pp. 228–229.

2. The Double Jeopardy Clause does not require vacation of Schiro's death sentence. His argument that his sentencing proceeding amounted to a successive prosecution for intentional murder in violation of the Clause is inconsistent with the Court's prior decisions. Because a second sentencing proceeding following retrial ordinarily is constitutional, see, *e. g., Stroud* v. *United States,* 251 U. S. 15, 17–18, an initial

sentencing proceeding following trial on the issue of guilt does not violate the Clause. The Court has also upheld the use of prior convictions to enhance sentences for subsequent convictions, even though this means a defendant must, in a certain sense, relitigate in a sentencing proceeding conduct for which he was previously tried. See, *e. g., Spencer* v. *Texas*, 385 U. S. 554, 560. In short, as applied to successive prosecutions, the Clause is written in terms of potential or risk of trial and conviction, not punishment. *Bullington* v. *Missouri*, 451 U. S. 430, 438, 446, distinguished. Pp. 229–232.

3. Nor does the doctrine of collateral estoppel require vacation of Schiro's death sentence. The Court does not address his contention that the doctrine bars the use of the "intentional" murder aggravating circumstance, because he has not met his burden of establishing the factual predicate for the application of the doctrine, namely, that an issue of ultimate fact has once been determined in his favor. See, *e. g., Ashe* v. *Swenson*, 397 U. S. 436, 443. Specifically, because an examination of the entire record shows that the trial court's instructions on the issue of intent to kill were ambiguous, and that uncertainty exists as to whether the jury believed it could return more than one verdict, the verdict actually entered could have been grounded on an issue other than intent to kill, see *id.*, at 444, and, accordingly, Schiro has failed to demonstrate that it amounted to an acquittal on the intentional murder count. Pp. 232–236.

963 F. 2d 962, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. BLACKMUN, J., filed a dissenting opinion, *post*, p. 237. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post*, p. 239.

Monica Foster, by appointment of the Court, 508 U. S. 970, argued the cause for petitioner. With her on the briefs was *Rhonda Long-Sharp*.

Arend J. Abel, Deputy Attorney General of Indiana, argued the cause for respondents. With him on the brief were *Pamela Carter*, Attorney General, and *Matthew R. Gutwein* and *Wayne E. Uhl*, Deputy Attorneys General.

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we determine whether the Double Jeopardy Clause requires us to vacate the sentence of death imposed on petitioner Thomas Schiro. For the reasons explained below, we hold that it does not.

I

Schiro was convicted and sentenced to death for murder. The body of Laura Luebbehusen was discovered in her home on the morning of February 5, 1981, by her roommate, Darlene Hooper, and Darlene Hooper's former husband. Darlene Hooper, who had been away, returned to find the home in disarray. Blood covered the walls and floor; Laura Luebbehusen's semiclad body was lying near the entrance. The police recovered from the scene a broken vodka bottle, a handle and metal portions of an iron, and bottles of various types of liquor.

The pathologist testified that there were a number of contusions on the body, including injuries to the head. The victim also had lacerations on one nipple and a thigh, and a tear in the vagina, all caused after death. A forensic dentist determined that the thigh injury was caused by a human bite. The cause of death was strangulation.

Laura Luebbehusen's car was later found near a halfway house where Schiro was living. Schiro told one counselor at the halfway house he wanted to discuss something "heavy." App. 53. Schiro later confessed to another counselor that he had committed the murder. After his arrest, he confessed to an inmate in the county jail that he had been drinking and taking Quaaludes the night of the killing, and that he had had intercourse with the victim both before and after killing her.

Schiro also admitted the killing to his girlfriend, Mary Lee. Schiro told Mary Lee that he gained access to Laura Luebbehusen's house by telling her his car had broken down. Once in the house, he exposed himself to her. She told him that she was a lesbian, that she had been raped as a child, that she had never otherwise had intercourse before and did not want to have sex. Nonetheless, Schiro raped her numerous times. There was evidence that Schiro forced her to consume drugs and alcohol. When Laura Luebbehusen tried to escape, Schiro restrained and raped her at least once more. Then, as Laura Luebbehusen lay or slept on the bed, Schiro realized that she would have to die so that she would not turn him in. He found the vodka bottle and beat her on the head with it until it broke. He then beat her with the iron and, when she resisted, finally strangled her to death. Schiro dragged her body into another room and sexually assaulted the corpse. After the murder, he attempted to destroy evidence linking him to the crime.

II

At the time of the crime, the State of Indiana defined murder as follows:

> "A person who:
>
> "(1) knowingly or intentionally kills another human being; or
>
> "(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, criminal deviate conduct, kidnapping, rape or robbery;
>
> "commits murder, a felony." Ind. Code § 35–42–1–1 (Supp. 1978).

Schiro was charged with three counts of murder. In Count I he was charged with "knowingly" killing Laura Luebbehusen; in Count II with killing her while committing the crime of rape; and in Count III with killing her while committing criminal deviate conduct. App. 3–5. The State sought the death penalty for Counts II and III.

At trial, Schiro did not contest that he had killed Laura Luebbehusen. Indeed, in closing argument, Schiro's defense attorney stated: "Was there a killing? Sure, no doubt about it. Did Tom Schiro do it? Sure . . . . There's no question about it, I'm not going to try . . . and 'bamboozle' this jury. There was a killing and he did it." App. to Brief for Respondent 24. Instead, the defense argued that Schiro either was not guilty by reason of insanity or was guilty but mentally ill, an alternative verdict permitted under Indiana law.

The jury was given 10 possible verdicts, among them the 3 murder counts described above, the lesser included offenses of voluntary and involuntary manslaughter, guilty but mentally ill, not guilty by reason of insanity, and not guilty. App. 37–38. After five hours of deliberation, the jury returned a verdict of guilty on Count II; it left the remaining verdict sheets blank.

Under Indiana law, to obtain the death penalty the State is required to establish beyond a reasonable doubt the existence of at least one of nine aggravating factors. Ind. Code §35–50–2–9(b) (Supp. 1978). The aggravating factor relevant here is: "[T]he defendant committed the murder by intentionally killing the victim while committing or attempting to commit . . . rape" or another enumerated felony. §35–50–2–9(b)(1). Upon proof beyond a reasonable doubt of an aggravating factor, the sentencer weighs the factor against any mitigating circumstances. When the initial conviction is by a jury, the "jury . . . reconvene[s] for the sentencing hearing" to "recommend to the court whether the death penalty should be imposed." §§35–50–2–9(d), (e). The trial judge makes "the final determination of the sentence, after considering the jury's recommendation." §35–50–2–9(e)(2). "The court is not bound by the jury's recommendation," however. *Ibid.*

The primary issue at the sentencing hearing was the weight to be given Schiro's mitigating evidence. Defense counsel stated to the jury that "I assume by your verdict [at the guilt phase that] you've probably decided" that the aggravating circumstance was proved. App. to Brief for Respondent 31–32. He therefore confined his argument to a plea for leniency, citing Schiro's mental and emotional problems. After considering the statements of counsel, the jury recommended against the death penalty. The trial judge rejected the jury's recommendation and sentenced Schiro to death. While the case was pending on direct appeal, the Indiana Supreme Court granted the State's petition to remand the case to the trial court to make written findings of fact regarding aggravating and mitigating circumstances. The trial court found that the State had proved beyond a reasonable doubt that "[t]he defendant committed the murder by intentionally killing the victim while committing or attempting to commit . . . rape." App. 46. The trial court also found that no mitigating circumstances had been established, and reaffirmed the sentence of death. *Id.*, at 50.

The sentence was affirmed on direct appeal to the Indiana Supreme Court. *Schiro* v. *State*, 451 N. E. 2d 1047 (1983). This Court denied certiorari. *Schiro* v. *Indiana*, 464 U. S. 1003 (1983). Schiro sought postconviction relief in state court. Again, the Indiana Supreme Court affirmed the judgment of the trial court. *Schiro* v. *State*, 479 N. E. 2d 556 (1985). This Court again denied a petition for a writ of certiorari. *Schiro* v. *Indiana*, 475 U. S. 1036 (1986). Schiro then filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Indiana. The District Judge remanded the case to the Indiana courts for exhaustion of state remedies. The Indiana Supreme Court affirmed the conviction and sentence for a third time. *Schiro* v. *State*, 533 N. E. 2d 1201 (1989). In so doing, the Indiana Supreme Court rejected Schiro's argument that the jury's failure to convict him on the first murder count operated as an acquittal of intentional murder, and that the Double Jeopardy Clause prohibited the use of the intentional murder aggravating circumstance for sentencing purposes. The Indiana Supreme Court held that "[felony murder] is not an included offense of [murder] and where the jury, as in the instant case, finds the defendant guilty of one of the types of murder and remains silent on the other, it does not operate as an acquittal of the elements of the type of murder the jury chose not to consider." *Id.*, at 1208. This Court denied certiorari. *Schiro* v. *Indiana*, 493 U. S. 910 (1989).

The Federal District Court then denied Schiro's federal habeas petition. *Schiro* v. *Clark*, 754 F. Supp. 646 (ND Ind. 1990). The Court of Appeals for the Seventh Circuit affirmed. *Schiro* v. *Clark*, 963 F. 2d 962 (1992). The Court of Appeals accepted the Indiana Supreme Court's conclusion that the jury's verdict was not an acquittal on the Count I murder charge, and that the Double Jeopardy Clause was not violated by the use of the intentional murder aggravating circumstance. The Court of Appeals also concluded that collateral estoppel was not implicated since "the defendant must show that the jury's verdict actually and necessarily determined the issue he seeks to foreclose" and "Schiro's conviction for murder/rape did not act as an acquittal with respect to the pure murder charge as a matter of state law." *Id.*, at 970, n. 7.

We granted certiorari, 508 U. S. 905 (1993), to consider whether the trial court violated the Double Jeopardy Clause by relying on the intentional murder aggravating circumstance.

III

The State argues that granting relief to Schiro would require the retroactive application of a new rule, in violation of the principle announced in *Teague* v. *Lane*, 489 U. S. 288 (1989) (plurality opinion). *Teague* analysis is ordinarily our first step when we review a federal habeas case. See, *e. g.*, *Graham* v. *Collins*, 506 U. S. 461, 466–467 (1993). The *Teague* bar to the retroactive application of new rules is not, however, jurisdictional. *Collins* v. *Youngblood*, 497 U. S. 37, 40–41 (1990). In this case, the State did not raise the *Teague* argument in the lower courts. Cf. *Parke* v. *Raley*, 506 U. S. 20, 26 (1993). While we ordinarily do not review claims made for the first time in this Court, see, *e. g.*, *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 645–646 (1992), we recognize that the State, as respondent, is entitled to rely on any legal argument in support of the judgment below. See, *e. g.*, *Dandridge* v. *Williams*, 397 U. S. 471, 475, n. 6 (1970).

Nevertheless, the State failed to argue *Teague* in its brief in opposition to the petition for a writ of certiorari. In deciding whether to grant certiorari in a particular case, we rely heavily on the submissions of the parties at the petition stage. See this Court's Rule 15.1. If, as in this case, a legal issue appears to warrant review, we grant certiorari in the expectation of being able to decide that issue. Since a State can waive the *Teague* bar by not raising it, see *Godinez* v. *Moran*, 509 U. S. 389, 397, n. 8 (1993), and since the propriety of reaching the merits of a dispute is an important consideration in deciding whether or not to grant certiorari, the State's omission of any *Teague* defense at the petition stage is significant. Although we undoubtedly have the discretion to reach the State's *Teague* argument, we will not do so in these circumstances.

IV

Schiro first argues that he could not be sentenced to death based on the intentional murder aggravating circumstance, because the sentencing proceeding amounted to a successive prosecution for intentional murder in violation of the Double Jeopardy Clause.

We have recognized that the Double Jeopardy Clause consists of several protections: "It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." *North Carolina* v. *Pearce*, 395 U. S. 711, 717 (1969) (footnotes omitted). These protections stem from the underlying premise that a defendant should not be twice tried or punished for the same offense. *United States* v. *Wilson*, 420 U. S. 332, 339 (1975). The Clause operates as a "bar against repeated attempts to convict, with consequent subjection of the defendant to embarrassment, expense, anxiety, and insecurity, and the possibility that he may be found guilty even though innocent." *United States* v. *DiFrancesco,* 449 U. S. 117, 136 (1980). When a defendant has been acquitted, the "Clause guarantees that the State shall not be permitted to make repeated attempts to convict him." *Wilson, supra,* at 343. Where, however, there is "no threat of either multiple punishment or successive prosecutions, the Double Jeopardy Clause is not offended." 420 U. S., at 344 (footnote omitted). Thus, our cases establish that the primary evil to be guarded against is successive prosecutions: "[T]he prohibition against multiple trials is the controlling constitutional principle." *DiFrancesco, supra,* at 132 (internal citations omitted). See also *United States* v. *Martin Linen Supply Co.,* 430 U. S. 564, 569 (1977).

Schiro urges us to treat the sentencing phase of a single prosecution as a successive prosecution for purposes of the Double Jeopardy Clause. We decline to do so. Our prior decisions are inconsistent with the argument that a first sentencing proceeding can amount to a successive prosecution. In *Stroud* v. *United States,* 251 U. S. 15, 17–18 (1919), we held that where a defendant's murder conviction was overturned on appeal, the defendant could be resentenced after retrial. Similarly, we found no constitutional infirmity in holding a second sentencing hearing where the first sentence was improperly based on a prior conviction for which the defendant had been pardoned. *Lockhart* v. *Nelson,* 488 U. S. 33 (1988). See also *North Carolina* v. *Pearce, supra,* at 721 ("[W]e cannot say that the constitutional guarantee against double jeopardy of its own weight restricts the imposition of an otherwise lawful single punishment" upon retrial); *Chaffin* v. *Stynchcombe,* 412 U. S. 17, 23–24 (1973) (same). If a second sentencing proceeding ordinarily does not violate the Double Jeopardy Clause, we fail to see how an initial sentencing proceeding could do so.

We have also upheld the use of prior convictions to enhance sentences for subsequent convictions, even though this means a defendant must, in a certain sense, relitigate in a sentencing proceeding conduct for which he was previously tried. *Spencer* v. *Texas*, 385 U. S. 554, 560 (1967). Cf. *Moore* v. *Missouri*, 159 U. S. 673, 678 (1895) ("[T]he State may undoubtedly provide that persons who have been before convicted of a crime may suffer severer punishment for subsequent offences than for a first offence"). In short, as applied to successive prosecutions, the Clause "is written in terms of potential or risk of trial and conviction, not punishment." *Price* v. *Georgia*, 398 U. S. 323, 329 (1970).

Our decision in *Bullington* v. *Missouri*, 451 U. S. 430 (1981), is not to the contrary. Bullington was convicted of capital murder. At the first death penalty sentencing proceeding, the jury rejected the death penalty and sentenced him to a term of years. The conviction was overturned; on resentencing the State again sought the death penalty. In *Bullington* we recognized the general rule that "the Double Jeopardy Clause imposes no absolute prohibition against the imposition of a harsher sentence at retrial." *Id.*, at 438. Nonetheless, we recognized a narrow exception to this general principle because the capital sentencing scheme at issue "differ[ed] significantly from those employed in any of the Court's cases where the Double Jeopardy Clause has been held inapplicable to sentencing." *Ibid.* Because the capital sentencing proceeding "was itself a trial on the issue of punishment," *ibid.*, requiring a defendant to submit to a second, identical proceeding was tantamount to permitting a second prosecution of an acquitted defendant, *id.*, at 446.

This case is manifestly different. Neither the prohibition against a successive trial on the issue of guilt nor the *Bullington* prohibition against a second capital sentencing proceeding is implicated here—the State did not reprosecute Schiro for intentional murder, nor did it force him to submit to a second death penalty hearing. It simply conducted a single sentencing hearing in the course of a single prosecution. The state is entitled to "one fair opportunity" to prosecute a defendant, *Bullington, supra,* at 446 (internal quotation marks omitted), and that opportunity extends not only to prosecution at the guilt phase, but also to present evidence at an ensuing sentencing proceeding.

V

Schiro also contends that principles of constitutional collateral estoppel require vacation of his death sentence. In *Ashe* v. *Swenson,* 397 U. S. 436 (1970), we held that the Double Jeopardy Clause incorporates the doctrine of collateral estoppel in criminal proceedings. See also *Dowling* v. *United States,* 493 U. S. 342, 347 (1990). Collateral estoppel, or, in modern usage, issue preclusion, "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe,* 397 U. S., at 443. Schiro reasons that the jury acquitted him of "intentionally" murdering Laura Luebbehusen, and that as a result, the trial court was precluded from finding the existence of the aggravating circumstance that he "committed the murder by intentionally killing the victim while committing or attempting to commit . . . rape." We do not address whether collateral estoppel could bar the use of the "intentional" murder aggravating circumstance, because Schiro has not met his burden of establishing the factual predicate for the application of the doctrine, if it were applicable, namely, that an "issue of ultimate fact has once been determined" in his favor. *Ibid.*

The Indiana Supreme Court concluded that the jury verdict did not amount to an acquittal on the intentional murder count. *Schiro* v. *State,* 533 N. E. 2d, at 1201. Ordinarily on habeas review, we presume the correctness of state court findings of fact. See 28 U. S. C. § 2254(d). Cf. also *Cichos* v. *Indiana,* 385 U. S. 76, 79–80 (1966). The preclusive effect of the jury's verdict, however, is a question of federal law which we must review *de novo.* Cf. *Ashe* v. *Swenson,* 397 U. S., at 444.

We must first determine "whether a rational jury could have grounded its verdict upon an issue other than" Schiro's intent to kill. *Ibid.* Cf. 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4421, p. 192 (1981) ("Issue preclusion attaches only to determinations that were necessary to support the judgment entered in the first action"). To do so, we "examine the record of a prior proceeding taking into account the pleadings, evidence, charge, and other relevant matter . . . ." *Ashe* v. *Swenson, supra,* at 444 (internal quotation marks omitted). The burden is "on the defendant to demonstrate that the issue whose relitigation he seeks to foreclose was actually decided in the first proceeding." *Dowling,* 493 U. S., at 350. In *Dowling,* for example, the defendant contended that because he had been acquitted of a robbery, the jury must have concluded that he had not been present at the crime. *Ibid.* In rejecting that argument, we considered the fact that during the trial there was a discussion between the lawyers and the judge where it was asserted that the intruder's identity was not a factual issue in the case. *Id.,* at 351. Because there were "any number of possible explanations for the jury's acquittal verdict," the defendant had "failed to satisfy his burden of demonstrating" that he was not one of the intruders. *Id.,* at 352.

Applying these principles, we find that the jury could have grounded its verdict on an issue other than Schiro's intent to kill. The jury was not instructed to return verdicts on all the counts listed on the verdict sheets. In fact, there are indications in the record that the jury might have believed it could only return one verdict. In closing argument at the guilt phase, defense counsel told the jury that it would "have to go back there and try to figure out which one of eight or ten verdicts . . . that you will return back into this Court." App. to Brief for Respondents 17. The prosecution also told the jury that "you are only going to be allowed to return one verdict." *Id.,* at 27. Although the jury instructions indicated to the jury that more than one verdict was possible, *id.*, at 27–28, on this record it is impossible to tell which of these statements the jury relied on. The dissent concludes that the jury acquitted on Count I for lack of intent, based on the fact that the only way the jury could have expressed that conclusion was by leaving the Count I verdict form blank, as it did. What stands in the way of such an inference, however, is that the jury would also have acted as it did after reaching a guilty verdict on Count II but without ever deliberating on Count I. In short, since it was not clear to the jury that it needed to consider each count independently, we will not draw any particular conclusion from its failure to return a verdict on Count I.

The jury instructions on the issue of intent to kill were also ambiguous. Under Indiana law, a person who either "knowingly or intentionally kills another human being" or "kills another human being while committing or attempting to commit . . . rape" is guilty of "murder." Ind. Code § 35–42–1–1 (Supp. 1978). Thus, intent to kill is not required for a felony murder conviction. Schiro reasons that since the jury found him guilty of felony murder in the course of a rape, but failed to convict him of intentional murder, the jury must have found that he did not have an intent to kill.

We do not so interpret the jury's failure to convict on Count I, however. Although the jury was provided with the state law definition of murder, App. 21, the judge also instructed the jury that the State had to prove intent for both felony and intentional murder: "To sustain the charge of *murder*, the State must prove . . . [t]hat the defendant engaged in the conduct which caused the death of Laura Luebbehusen [and] [t]hat when the defendant did so, he knew the conduct would or intended the conduct to cause the death of Laura Luebbehusen." *Id.*, at 22–23 (emphasis added). This instruction did not differentiate between the two ways of proving "murder" under Indiana law. The jury was further told that "[t]he instructions of the court are the best source as to the law applicable to this case." *Id.*, at 20. The jury may well have believed, therefore, that it was required to find a knowing or intentional killing in order to convict Schiro on any of the three murder counts. In sum, in light of the jury instructions, we find that as a matter of law the jury verdict did not necessarily depend on a finding that Schiro lacked an intent to kill.

Although not necessary to our conclusion, we note that there is additional evidence in the record indicating that Schiro's intent to kill was not a significant issue in the case. The defense primarily confined its proof at trial to showing that Schiro was insane, and did not dispute that Schiro had committed the murder. At no point during the guilt phase did defense counsel or any of the defense witnesses assert that Schiro should be acquitted on Count I because he lacked an intent to kill. Indeed, we have located no point in the transcript of the proceedings where defense counsel or defense witnesses even discussed the issue of Schiro's intent to kill. Schiro argues that his intent to kill was put in issue by the insanity defense. But, even if that were so, the jury did not accept this defense. Even defense counsel apparently believed that Schiro's intent was not an issue in the case. After the jury returned its verdict of guilty on Count II, and reconvened to consider the appropriate sentence, defense counsel indicated his belief that by convicting Schiro on Count II, the jury had found that he had an intent to kill:

> "The statute . . . provides for aggravating circumstances. There is one listed in this case, and one which you may consider. And that one is that the murder was committed, was intentionally committed in the commission of rape and some other things. I assume by your verdict Friday, or Saturday, that you've probably . . . decided that issue. In finding him guilty of murder in the commission of rape, I'm assuming you've decided beyond

> a reasonable doubt that it was done in the commission of a rape, and so that aggravating circumstance most likely exists in your mind." App. to Brief for Respondent 31–32.

Finally, we observe that a jury finding of intent to kill is entirely consistent with the evidence presented at trial. By Schiro's own admission, he decided to kill Laura Luebbehusen after she tried to escape and he realized she would go to the police. In addition, the physical evidence suggested a deliberate, rather than unintentional, accidental, or even reckless, killing. The victim was repeatedly beaten with a bottle and an iron; when she resisted, she was strangled to death.

We have in some circumstances considered jury silence as tantamount to an acquittal for double jeopardy purposes. *Green* v. *United States*, 355 U. S. 184, 190–191 (1957); *Price* v. *Georgia*, 398 U. S., at 329. The failure to return a verdict does not have collateral estoppel effect, however, unless the record establishes that the issue was actually and necessarily decided in the defendant's favor. As explained above, our cases require an examination of the entire record to determine whether the jury could have "grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." *Ashe*, 397 U. S., at 444 (internal quotation marks omitted). See also *Dowling*, 493 U. S., at 350. In view of Schiro's confession to the killing, the instruction requiring the jury to find intent to kill, and the uncertainty as to whether the jury believed it could return more than one verdict, we find that Schiro has not met his "burden . . . to demonstrate that the issue whose relitigation he seeks to foreclose was actually decided" in his favor. *Ibid.*

The judgment of the Court of Appeals is affirmed.

So ordered.

JUSTICE BLACKMUN, dissenting.

I join JUSTICE STEVENS' dissenting opinion. I write separately because I believe *Bullington* v. *Missouri,* 451 U. S. 430 (1981), provides a compelling alternative ground for vacation of Schiro's death sentence.

In *Bullington,* this Court held that once a capital defendant is acquitted of the death sentence, the Double Jeopardy Clause bars his again being placed in jeopardy of death at a subsequent sentencing proceeding. The majority rejects Schiro's double jeopardy claim on the theory that because "a second sentencing proceeding ordinarily does not violate the Double Jeopardy Clause," it fails to see "how an initial sentencing proceeding could do so." *Ante,* at 230. The essential holding of *Bullington,* however, was that capital sentencing proceedings uniquely *can* constitute a "jeopardy" under the Double Jeopardy Clause. The proceeding examined in *Bullington* had "the hallmarks of the trial on guilt or innocence," 451 U. S., at 439, where the prosecution must "prov[e] its case" beyond a reasonable doubt, *id.,* at 443. We concluded that such a bifurcated capital penalty proceeding is itself a trial that places a defendant in jeopardy of death. *Ibid.*

The sentencing proceeding at issue here is indistinguishable from that confronted in *Bullington.* As Justice DeBruler noted in dissent from the affirmance of Schiro's sentence on direct appeal:

> "[T]he jury reconvenes in court for the sentencing hearing. It is presided over by the judge. The defendant is present with his counsel and the state by its trial prosecutor. Evidence is presented in an adversarial setting .... The burden is upon the state to prove the aggravating circumstance beyond a reasonable doubt. The lawyers make final arguments to the jury. The jury retires to deliberate and returns into open court with its verdict in the form of a recommendation. This is a full scale jury trial in every sense of those terms. The defendant must surely feel that he is in 'direct peril'

> of receiving the death penalty as he stands to receive the recommendation of the jury." *Schiro* v. *State,* 451 N. E. 2d 1047, 1065 (Ind. 1983) (citation omitted).

The "unique" nature of modern capital sentencing proceedings identified in *Bullington,* 451 U. S., at 442, n. 15, derives from the fundamental principle that death is "different," see, *e. g., Gardner* v. *Florida,* 430 U. S. 349, 357 (1977) (plurality opinion); *Woodson* v. *North Carolina,* 428 U. S. 280, 305 (1976) (plurality opinion); see also *Furman* v. *Georgia,* 408 U. S. 238, 306 (1972) (Stewart, J., concurring), and that heightened reliability is required at all stages of the capital trial. The "trial-like" nature of Schiro's capital sentencing proceeding, and the trauma he necessarily underwent in defending against the sentence of death, are directly analogous to guilt-phase proceedings and thus bring the Double Jeopardy Clause into play.

Even if the issue of Schiro's intent to kill was not "actually and necessarily decided" for collateral estoppel purposes, *ante,* at 236, the jury's failure to convict Schiro of intentional murder impliedly acquitted him under the Double Jeopardy Clause. See *Green* v. *United States,* 355 U. S. 184, 191 (1957) (jury "was given a full opportunity to return a verdict"); *Price* v. *Georgia,* 398 U. S. 323, 329 (1970). As JUSTICE STEVENS pointedly notes, *post,* at 243, there is no question that Schiro could not have been reprosecuted for intentional murder. Nor is there any question that the aggravator required the prosecution to prove again at sentencing, beyond a reasonable doubt, the identical elements of that murder charge. Thus, "the jury ha[d] already acquitted the defendant of whatever was necessary to impose the death sentence." 451 U. S., at 445. Over a unanimous jury recommendation of life and after a State Supreme Court remand, the trial judge condemned Schiro to death in reliance *nunc pro tunc* on the very conduct for which Schiro had been acquitted. This sentence cannot be tolerated under the Double Jeopardy Clause.

I respectfully dissent.

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

The jury found Thomas Schiro guilty of felony murder but not intentional murder. Thereafter, in a separate sentencing hearing, the same jury unanimously concluded that Schiro did not deserve the death penalty, presumably because he had not intended to kill.[1] Nevertheless, without finding any aggravating circumstance, the trial judge overrode the jury's recommendation and sentenced Schiro to death. Months later, when the Indiana Supreme Court remanded the case to give the judge an opportunity to justify that sentence, the judge found that Schiro had intentionally killed his victim. That finding, like the majority's holding today, violated the central purpose of the Double Jeopardy Clause. After the issue of intent had been raised at trial and twice resolved by the jury, and long after that jury had been discharged, it was constitutionally impermissible for the trial judge to reexamine the issue. Because the death sentence rests entirely on that unauthorized finding, the law requires that it be set aside.

I

The Court devotes most of its opinion to a discussion of the facts. I cannot disagree that the gruesome character of the crime is significant. It is important precisely because it is so favorable to prosecutors seeking the death penalty.

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[1] Under Indiana's death penalty statute, the State may seek the death penalty for murder by proving beyond a reasonable doubt the existence of at least one statutory aggravating circumstance. Ind. Code § 35–50–2–9(a) (Supp. 1978). The only aggravating circumstance at issue here was whether the defendant committed the murder by intentionally killing the victim while committing or attempting to commit rape or one of six other enumerated felonies. § 35–50–2–9(b)(1). When trial is by jury, the jury that convicted the defendant may recommend the death penalty only if it finds that the state proved beyond a reasonable doubt that at least one aggravating circumstance exists and that the aggravating circumstances outweigh any mitigating circumstances. § 35–50–2–9(e).

Such facts undoubtedly would increase jurors' inclination to impose the death penalty if they believed the defendant had intentionally killed his unfortunate victim. Yet in this case, despite the horror of the crime, the jurors *still* unanimously refused to find Schiro guilty of intentional murder and unanimously concluded that he should not be executed. These determinations are enigmatic unless the jury resolved the intent issue in Schiro's favor.

The principal issue at trial was Schiro's mental condition. No one disputed that he had caused his victim's death, but intent remained at issue in other ways. Five expert witnesses—two employed by the State, one selected by the court, and two called by the defense—testified at length about Schiro's unusual personality, *e. g.*, Tr. 1699, his drug and alcohol addiction, *id.*, at 1859, 1877, and his history of mental illness, *e. g.*, *id.*, at 1412, 1414, 1703–1708, 1871, 1877. Lay and expert witnesses described Schiro's bizarre attachment to a mannequin, *id.*, at 1469–1470, 1699–1702, and other incidents that lent support to a claim of diminished capacity. Conceivably, that evidence might have persuaded the jury to find Schiro not responsible by reason of insanity, App. 37, or guilty of murder, voluntary manslaughter, or involuntary manslaughter but mentally ill, *id.*, at 37–38. Instead, that evidence and the details of Schiro's confessions apparently convinced the jury that at the time of his offense, Schiro did not have the requisite mental state to support a conviction for intentional murder.

A careful perusal of the verdict forms demonstrates that there is nothing even arguably ambiguous about the jury's verdict and that the jurors expressed their conclusion in the only way they could. Each of the 10 forms contained a space to be checked to record agreement with a proposed verdict. The only way to record disagreement was to leave the space blank. Thus, by leaving nine forms blank and checking only one, the jurors rejected seven alternatives that were favorable to the defendant (two involving lesser offenses, one finding the defendant not responsible by reason of insanity, three finding him guilty of murder or lesser offenses but mentally ill, and one finding him not guilty of anything), rejected two alternatives favorable to the prosecution (guilty on Counts I and III), and ultimately recorded their conclusion that he was guilty on Count II.[2] The jurors therefore found Schiro guilty on Count II and not guilty on the remainder of the charges. Notably, only the fourth verdict form provided for a not guilty verdict, and that form could not be executed unless the defendant was not guilty of all charges. The only way the jurors could return a verdict of guilty on Count II and not guilty on the other counts was to check the fifth form and leave the others blank—which is exactly what they did.

Even if the record were less clear, the governing rule of law would lead to the same conclusion. After a full trial, the jury was given the opportunity to find Schiro guilty on each of three counts of murder, on just two of those counts, or on just one. As in the similar situation in *Green* v. *United States*, 355 U. S. 184 (1957), the jury's silence on two counts should be treated no differently, for double jeopardy purposes, than if the jury had returned a verdict that expressly read: "'We find the defendant not guilty of intentional murder but guilty of murder in the second degree.'" *Id.*, at 191.[3] The only rational explanation for such a verdict is a failure of proof on the issue of intent—a failure that should have precluded relitigation of that issue at sentencing. As Justice DeBruler of the Indiana Supreme Court explained in his dissenting opinion:

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[2] Each form began: "We, the jury, find the defendant . . . ." The 10 alternatives were:

(1) ". . . not responsible by reason of insanity at the time of the death . . . ."

(2) ". . . guilty of Murder but mentally ill . . . ."

(3) ". . . guilty of the Murder of Laura Luebbehusen as charged in Count I of the information."

(4) ". . . not guilty."

(5) ". . . guilty of Murder while the said Thomas N. Schiro was committing and attempting the crime of rape as charged in Count II of the information."

(6) ". . . guilty while . . . committing and attempting to commit the crime of criminal deviate conduct as charged in Count III of the information."

(7) ". . . guilty of . . . the included offense of Voluntary Manslaughter."

(8) ". . . guilty of . . . the included offense of Involuntary Manslaughter."

(9) ". . . guilty of . . . Voluntary Manslaughter, but mentally ill."

(10) ". . . guilty of . . . Involuntary Manslaughter, but mentally ill." App. 37–38.

> "At the trial, the prosecution used every resource at its disposal to persuade the jury that appellant had a knowing state of mind when he killed his victim. It failed to do so. At the sentencing hearing before the jury it had an opportunity to persuade the jury that appellant had an intentional state of mind when he killed his victim. The jury returned a recommendation of no death. At the sentencing hearing before the judge, the prosecution had yet another opportunity to demonstrate an intentional state of mind, and finally succeeded. In my view, the silent verdict of the jury on Count I, charging a knowing state of mind, must be deemed the constitutional equivalent of a final and immutable rejection of the State's claim that appellant deserves to die because he had an intentional state of mind. That verdict acquitted appellant of that condition which was necessary to impose the death penalty under this charge." *Schiro* v. *State*, 533 N. E. 2d 1201, 1209 (1989).

In this case the trial judge's decision to override the jury's recommendation against the death sentence rested entirely on his finding that Schiro had intentionally killed his victim—an aggravating circumstance that, in Indiana capital sentencing proceedings, must be established beyond a reasonable doubt. Ind. Code § 35–50–2–9(e)(1) (Supp. 1978). In other words, the judge sentenced Schiro to death because he was guilty of intentional murder, even though the jury had found otherwise. Even though the Court has held that the Constitution does not preclude a judge from overriding a jury's recommendation of a life sentence, *Spaziano* v. *Florida*, 468 U. S. 447, 490 (1984), an egregious violation of the collateral estoppel principles embedded in the Double Jeopardy Clause occurs if the judge can base a capital sentence on a factual predicate that the jury has rejected.[4] That is what happened here.

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[3] "American courts have held with uniformity that where a defendant is charged with two offenses, neither of which is a lesser offense included within the other, and has been found guilty on one but not on the second he cannot be tried again on the second . . . ." 355 U. S., at 194, n. 14. See also *Price* v. *Georgia*, 398 U. S. 323, 328–329 (1970).

II

Having failed to convict Schiro of intentional murder after a full trial, the State plainly could not retry him for that offense after the jury was discharged. An estoppel that would bar a retrial should equally foreclose a death sentence predicated on a postverdict reexamination of the central issue resolved by the jury against the State. Schiro's execution will nonetheless go forward because the trial judge made a postverdict finding equivalent to a determination that Schiro was guilty of intentional murder. The Court attempts to justify this anomalous result by relying on the improbable assumption that the jury may not have resolved the intent issue in Schiro's favor. The Court advances three reasons in support of that assumption: Schiro's "confession to the killing, the instruction requiring the jury to find intent to kill, and the uncertainty as to whether the jury believed it could return more than one verdict." *Ante,* at 236.[5] None justifies the majority's result.

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[4] To be sure, it is generally accepted among the Federal Courts of Appeals that a judge may base a sentence in a noncapital case upon factors that the jury did not find beyond a reasonable doubt. See, *e. g., United States* v. *Carrozza*, 4 F. 3d 70, 80 (CA1 1993); *United States* v. *Olderbak*, 961 F. 2d 756, 764–765 (CA8), cert. denied, 506 U. S. 959 (1992); *United States* v. *Averi*, 922 F. 2d 765, 765–766 (CA11 1991); *United States* v. *Rodriguez-Gonzalez*, 899 F. 2d 177, 180–182 (CA2), cert. denied, 498 U. S. 844 (1990); *United States* v. *Isom*, 886 F. 2d 736, 738–739 (CA4 1989); *United States* v. *Juarez-Ortega*, 866 F. 2d 747, 749 (CA5 1989); see also *McMillan* v. *Pennsylvania*, 477 U. S. 79 (1986) (applying preponderance-of-evidence standard to sentencing considerations under state mandatory minimum statute satisfies due process). This view stems from the lower standard of proof required to establish sentencing factors in noncapital cases. *United States* v. *Mocciola*, 891 F. 2d 13, 16–17 (CA1 1989). But reliance upon this principle cannot sustain such a practice in a capital case where the sentencing factors—just as the elements at trial—must be proved beyond a reasonable doubt.

As to Schiro's confessions, such statements must be evaluated in the context of the entire record. Even though they would have been sufficient to support a guilty verdict on the intentional murder count, it is quite wrong to suggest that they necessitated such a verdict. See *Schiro* v. *State,* 451 N. E. 2d 1047, 1068 (Ind. 1983) (Prentice, J., concurring and dissenting) (stating that a finding of intentional killing "was not compelled"). The record as a whole, including the experts' testimony, is fully consistent with the conclusion that the jury rejected the prosecutor's submission on the intent question.

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[5] The Court correctly avoids reliance upon the quite different rationale—namely, the distinction between a "knowing" killing and an "intentional" killing—that the Indiana Supreme Court adopted. Noting that Count I merely required the jury to find that Schiro had "knowingly" killed his victim, whereas the aggravating circumstance supporting the death penalty required proof that he had "intentionally" killed, the court concluded that the verdict on Count I "could not be considered to have included any conclusion" on the intent issue raised at the sentencing hearing. *Schiro* v. *State,* 533 N. E. 2d 1201, 1208 (Ind. 1989). Yet because an "intentional" killing requires greater awareness of the consequences of the act than a "knowing" killing, such an illusory distinction is plainly unsatisfactory. As the dissenting justices pointed out, the difference between the two states of mind is insignificant and, in this instance, esoteric: "To accord the difference, one would have to believe that a person can be presently unaware that he is strangling another, while at the same time having a goal presently in mind to strangle such other person." *Id.,* at 1209.

The Court also seeks support from the trial court's Instruction No. 8, which informed the jury that to sustain the charge of murder, the State had to prove intent. *Ante*, at 234.[6] Most naturally read, however, that instruction referred only to the knowing or intentional murder charge in Count I. It did not, as the Court's opinion suggests, expressly refer to "both" felony and intentional murder, *ibid.;* on the contrary, it made no mention of felony murder. In Indiana, intent to kill is not an element of felony murder. Accordingly, the definition of murder in Instruction No. 4 clearly indicated that a person commits murder either when he knowingly or intentionally kills someone *or* when he "[k]ills another human being while committing or attempting to commit arson, burglary, child molesting, criminal deviate conduct, kidnapping, rape or robbery." App. 21; Ind. Code § 35–42–2–1 (Supp. 1978). If Instruction No. 8 were intended to refer to the felony murder charges in Counts II and III, it plainly misstated the law. The instruction *did* accurately state the elements of the knowing or intentional murder charge in Count I, however. It is worth noting that not one of the seven opinions that various members of the Indiana Supreme Court wrote at different stages of this litigation construed that instruction as applicable to Counts II and III.[7]

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[6] Specifically, Instruction No. 8 provided that "to sustain the charge of murder," the State must prove (1) that "the defendant engaged in the conduct which caused the death of Laura Luebbehusen," and (2) that "when the defendant did so, he knew the conduct would or intended the conduct to cause the death of Laura Luebbehusen." App. 22–23. The instruction further stated that "[i]f you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, and that the defendant was not insane at the time of the murder, then you should find the defendant guilty." *Id.*, at 23.

[7] If, as the Court assumes, the jury believed "that it was required to find a knowing or intentional killing in order to convict Schiro on any of the three murder counts," *ante*, at 235, there is no rational explanation for its failure to return a guilty verdict for intentional murder (Count I) if it

Finally, the Court surmises that the jury "might have believed it could only return one verdict." *Ante*, at 233. In view of the trial court's instruction that the jury foreman "must sign and date the verdict(s) to which you all agree," App. 28, this speculation is unfounded. Similarly unwarranted is the majority's reliance upon isolated remarks by the prosecution and defense counsel to substantiate this speculation. Defense counsel understandably urged the jury to return only one verdict because he was seeking a verdict that would exonerate his client or minimize his culpability. Any one of 7 of the 10 forms submitted to the jury would have served that purpose. In fact, after defense counsel made the amorphous reference to one verdict in his closing argument, he went on to suggest that the jurors consider first the question of insanity, "because depending on that, *you may just stop there* or go on." App. to Brief for Respondents 17 (emphasis added).

As to the prosecutor's comment about "one verdict," *id.*, at 27, if that statement meant that the jury could only return 1 of the 10 forms, it blatantly misstated Indiana law.[8] More plausibly, the comment referred to a verdict in the general sense as the jury's one opportunity to return one or more verdict forms. In any event, we should not uphold a death sentence based on such an insubstantial and improper predicate.

Nothing the Indiana Supreme Court said supports the Court's speculation about the jury's reasons for failing to return a guilty verdict on Count I. Moreover, the Court

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believed convicting Schiro of killing during the commission of rape (Count II) also required a knowing or intentional killing.

[8] The judge's final instructions to the jury set forth no limitation on the number of verdicts it might properly return, and Indiana juries have regularly found a defendant guilty of both *mens rea* murder and felony murder with respect to a single killing. See, *e. g., Roche* v. *State*, 596 N. E. 2d 896 (Ind. 1992); *Lewis* v. *State*, 595 N. E. 2d 753 (Ind. App. 1992); *Hopkins* v. *State*, 582 N. E. 2d 345 (Ind. 1991).

refuses to acknowledge that the only way the jury could use the verdict forms submitted to it to express the conclusion that Schiro was guilty on Count II and not guilty on Counts I and III was to do just what it did—that is, to authorize the foreman to sign the verdict form for felony murder and to leave blank those forms for intentional murder and criminal deviate conduct.[9] Once found not guilty of intentional murder, Schiro could not thereafter have been prosecuted a second time for that offense. Given that Schiro admitted the killing, the only issue that the jury's verdict on Count I could possibly have resolved in his favor is the intent issue. Since there is not even an arguable basis for assuming that the jury's verdict on Count I was grounded on any other issue, the collateral estoppel component of the Double Jeopardy Clause also precluded the State from attempting to prove intentional murder at the penalty phase to support a sentence of death.

As Justice Stewart explained in his opinion for the Court in *Ashe* v. *Swenson*, 397 U. S. 436, 444 (1970) (footnotes omitted):

> "The federal decisions have made clear that the rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and ration-

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[9] The Court's suggestion that the jury may have reached "a guilty verdict on Count II . . . without ever deliberating on Count I," *ante*, at 234, is not only pure speculation, but highly improbable. Presumably jurors would normally begin their deliberations with the first count in the indictment or the first verdict form the court submitted to them.

It is also noteworthy that the record explains why the jury concluded that Schiro was not guilty of killing while committing or attempting to commit criminal deviate conduct as charged in Count III—namely, that Schiro killed his victim *prior* to the deviate sexual conduct on which the charge was based rather than *while* he was engaged in that predicate felony. Thus the record fully supports the jury's disposition of the three counts at the guilt phase of the trial as well as its decision at the penalty phase.

> ality. Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to 'examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.' The inquiry 'must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings.' *Sealfon* v. *United States,* 332 U. S. 575, 579. Any test more technically restrictive would, of course, simply amount to a rejection of the rule of collateral estoppel in criminal proceedings, at least in every case where the first judgment was based upon a general verdict of acquittal."

A fair appraisal of the general verdict of acquittal on Count I compels the conclusion that Schiro's death sentence rests entirely on the trial judge's constitutionally impermissible reexamination of the critical issue resolved in Schiro's favor by the jury's verdict on Count I. The Court's contrary conclusion rests on a "technically restrictive" approach that amounts to a rejection of the rule of collateral estoppel in capital sentencing proceedings.

I respectfully dissent.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. *v.* SCHEIDLER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 92–780. Argued December 8, 1993—Decided January 24, 1994

In this action, petitioner health care clinics alleged, among other things, that respondents, a coalition of antiabortion groups called the Pro-Life Action Network (PLAN) and others, were members of a nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity—including extortion under the Hobbs Act—in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) chapter of the Organized Crime Control Act of 1970, 18 U. S. C. §§ 1961–1968. They claimed that respondents conspired to use threatened or actual force, violence, or fear to induce clinic employees, doctors, and patients to give up their jobs, their right to practice medicine, and their right to obtain clinic services; that the conspiracy injured the clinics' business and property interests; and that PLAN is a racketeering enterprise. The District Court dismissed the case pursuant to Federal Rule of Civil Procedure 12(b)(6). It found that the clinics failed to state a claim under § 1962(c)—which makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt"—because they did not allege a profit-generating purpose in the activity or enterprise. It also dismissed their conspiracy claim under § 1962(d) on the ground that the § 1962(c) and other RICO claims they made could not stand. The Court of Appeals affirmed, agreeing that there is an economic motive requirement implicit in § 1962(c)'s enterprise element.

Held:

1. The clinics have standing to bring their claim. Since their complaint was dismissed at the pleading stage, the complaint must be sustained if relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon* v. *King & Spalding,* 467 U. S. 69, 73. Nothing more than the complaint's extortion and injury allegations are needed to confer standing at this stage. Pp. 255–256.

2. RICO does not require proof that either the racketeering enterprise or the predicate acts of racketeering in § 1962(c) were motivated by an economic purpose. Nowhere in either § 1962(c) or in § 1961's

definitions of "enterprise" and "pattern of racketeering activity" is there any indication that such a motive is required. While arguably an enterprise engaged in interstate or foreign commerce would have a profit-seeking motive, § 1962(c)'s language also includes enterprises whose activities "affect" such commerce. Webster's Third New International Dictionary defines "affect" as "to have a detrimental influence on"; and an enterprise surely can have such an influence on commerce without having its own profit-seeking motives. The use of the term "enterprise" in subsections (a) and (b), where it is arguably more tied in with economic motivation, also does not lead to the inference of an economic motive requirement in subsection (c). In subsections (a) and (b), an "enterprise" is an entity acquired through illegal activity or the money generated from illegal activity: the victim of the activity. By contrast, the "enterprise" in subsection (c) connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed. Since it is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity. Nor is an economic motive requirement supported by the congressional statement of findings that prefaces RICO and refers to activities that drain billions of dollars from America's economy. Predicate acts, such as the alleged extortion here, may not benefit the protesters financially, but they still may drain money from the economy by harming businesses such as the clinics. Moreover, a statement of congressional findings is a rather thin reed upon which to base a requirement neither expressed nor fairly implied from the Act's operative sections. Cf. *United States* v. *Turkette*, 452 U. S. 576. The Department of Justice's 1981 guidelines on RICO prosecutions are also unpersuasive, since 1984 amendments broadened the focus of RICO prosecutions from those association-in-fact enterprises that exist "for the purpose of maintaining operations directed toward an economic goal" to those that are "directed toward an economic or other identifiable goal." In addition, the statutory language is unambiguous, and there is no clearly expressed intent to the contrary in the legislative history that would warrant a different construction. Nor is there an ambiguity in RICO that would suffice to invoke the rule of lenity. See *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 499. Pp. 256–262.

968 F. 2d 612, reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. SOUTER, J., filed a concurring opinion, in which KENNEDY, J., joined, *post*, p. 263.

Fay Clayton argued the cause for petitioners. With her on the briefs were *Susan Valentine, Lowell E. Sachnoff, Jack L. Block, Judi A. Lamble, Alan M. Pollack,* and *Mitchell G. Mandell.*

Miguel A. Estrada argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Bryson,* and *Cynthia A. Young.*

G. Robert Blakey argued the cause for respondents. *Clark D. Forsythe* and *Thomas Brejcha* filed a brief for respondent Scheidler et al. *Jay Alan Sekulow, Walter M. Weber, Keith A. Fournier,* and *Vincent P. McCarthy* filed a brief for respondent Terry et al. *Craig L. Parshall, John W. Whitehead,* and *Alexis I. Crow* filed a brief for respondent Migliorino (Miller). *Paul Benjamin Linton* filed a brief for respondent Murphy.*

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*Briefs of *amici curiae* urging reversal were filed for the State of New York et al. by *Robert Abrams,* Attorney General of New York, *Jerry Boone,* Solicitor General, and *Sanford M. Cohen,* Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Richard Blumenthal* of Connecticut, *Roland W. Burris* of Illinois, *Michael F. Easley* of North Carolina, *Stephen D. Rosenthal* of Virginia, *Hubert H. Humphrey III* of Minnesota, and *Lee Fisher* of Ohio; for the American Medical Association et al. by *Jack R. Bierig, Carter G. Phillips, Kirk B. Johnson,* and *Ann E. Allen;* for the National Abortion Federation et al. by *Elaine Metlin, Eve W. Paul,* and *Roger K. Evans;* for the National Network of Abortion Funds by *Kathryn Kolbert;* and for the NOW Legal Defense and Education Fund et al. by *David I. Goldblatt, Charles S. Sims, Deborah A. Ellis,* and *Burt Neuborne.*

Briefs of *amici curiae* urging affirmance were filed for People for the Ethical Treatment of Animals, Inc., et al. by *Edward McGlynn Gaffney, Jr., David Goldberger,* and *Victor G. Rosenblum;* for the Ohio Right to Life Society, Inc., et al. by *David F. Forte;* and for the Southern Center for Law & Ethics et al. by *Albert L. Jordan, Steven T. McFarland,* and *Bradley P. Jacob.*

Briefs of *amici curiae* were filed for the American Civil Liberties Union by *Louis M. Bograd* and *Steven R. Shapiro;* and for Focus on the Family by *Stephen W. Reed* and *Ronald E. McKinstry.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We are required once again to interpret the provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) chapter of the Organized Crime Control Act of 1970 (OCCA), Pub. L. 91–452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961–1968 (1988 ed. and Supp. IV). Section 1962(c) prohibits any person associated with an enterprise from conducting its affairs through a pattern of racketeering activity. We granted certiorari to determine whether RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose. We hold that RICO requires no such economic motive.

I

Petitioner National Organization for Women, Inc. (NOW), is a national nonprofit organization that supports the legal availability of abortion; petitioners Delaware Women's Health Organization, Inc. (DWHO), and Summit Women's Health Organization, Inc. (SWHO), are health care centers that perform abortions and other medical procedures. Respondents are a coalition of antiabortion groups called the Pro-Life Action Network (PLAN), Joseph Scheidler and other individuals and organizations that oppose legal abortion, and a medical laboratory that formerly provided services to the two petitioner health care centers.[1]

Petitioners sued respondents in the United States District Court for the Northern District of Illinois, alleging violations of the Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. § 1 *et seq.*, and RICO's §§ 1962(a), (c), and (d), as well as several pendent state-law claims stemming from the activities of antiabortion protesters at the clinics. According to respondent Scheidler's congressional testimony, these protesters aim to shut down the clinics and persuade women not to have abortions. See, *e. g.*, Abortion Clinic Violence, Oversight Hearings before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 99th Cong., 1st and 2d Sess., 55 (1987) (statement of Joseph M. Scheidler, Executive Director, Pro-Life Action League). Petitioners sought injunctive relief, along with treble damages, costs, and attorney's fees. They later amended their complaint, and pursuant to local rules, filed a "RICO Case Statement" that further detailed the enterprise, the pattern of racketeering, the victims of the racketeering activity, and the participants involved.

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[1] The other respondents named in the complaint include the following: John Patrick Ryan, Randall A. Terry, Andrew Scholberg, Conrad Wojnar, Timothy Murphy, Monica Migliorino, Vital-Med Laboratories, Inc., Pro-Life Action League, Inc. (PLAL), Pro-Life Direct Action League, Inc. (PDAL), Operation Rescue, and Project Life.

The amended complaint alleged that respondents were members of a nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity including extortion in violation of the Hobbs Act, 18 U. S. C. § 1951.[2] Section 1951(b)(2) defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." Petitioners alleged that respondents conspired to use threatened or actual force, violence, or fear to induce clinic employees, doctors, and patients to give up their jobs, give up their economic right to practice medicine, and give up their right to obtain medical services at the clinics. App. 66, Second Amended Complaint ¶ 97. Petitioners claimed that this conspiracy "has injured the business and/or property interests of the [petitioners]." *Id.,* at 72, ¶ 104. According to the amended complaint, PLAN constitutes the alleged racketeering "enterprise" for purposes of § 1962(c). *Id.,* at 72–73, ¶¶ 107–109.

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[2] The Hobbs Act, 18 U. S. C. § 1951(a), provides: "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both." Respondents contend that petitioners are unable to show that their actions violated the Hobbs Act. We do not reach that issue and express no opinion upon it.

The District Court dismissed the case pursuant to Federal Rule of Civil Procedure 12(b)(6). Citing *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U. S. 127 (1961), it held that since the activities alleged "involve[d] political opponents, not commercial competitors, and political objectives, not marketplace goals," the Sherman Act did not apply. 765 F. Supp. 937, 941 (ND Ill. 1991). It dismissed petitioners' RICO claims under § 1962(a) because the "income" alleged by petitioners consisted of voluntary donations from persons opposed to abortion which "in no way were derived from the pattern of racketeering alleged in the complaint." *Ibid.* The District Court then concluded that petitioners failed to state a claim under § 1962(c) since "an economic motive requirement exists to the extent that some profit-generating purpose must be alleged in order to state a RICO claim." *Id.,* at 943. Finally, it dismissed petitioners' RICO conspiracy claim under § 1962(d) since petitioners' other RICO claims could not stand.

The Court of Appeals affirmed. 968 F. 2d 612 (CA7 1992). As to the RICO counts, it agreed with the District Court that the voluntary contributions received by respondents did not constitute income derived from racketeering activities for purposes of § 1962(a). *Id.,* at 625. It adopted the analysis of the Court of Appeals for the Second Circuit in *United States* v. *Ivic,* 700 F. 2d 51 (1983), which found an "economic motive" requirement implicit in the "enterprise" element of the offense. The Court of Appeals determined that "non-economic crimes committed in furtherance of non-economic motives are not within the ambit of RICO." 968 F. 2d, at 629. Consequently, petitioners failed to state a claim under § 1962(c). The Court of Appeals also affirmed dismissal of the RICO conspiracy claim under § 1962(d).

We granted certiorari, 508 U. S. 971 (1993), to resolve a conflict among the Courts of Appeals on the putative economic motive requirement of 18 U. S. C. §§ 1962(c) and (d). Compare *United States* v. *Ivic, supra,* and *United States* v. *Flynn,* 852 F. 2d 1045, 1052 (CA8), ("For purposes of RICO, an enterprise must be directed toward an economic goal"), cert. denied, 488 U. S. 974 (1988), with *Northeast Women's Center, Inc.* v. *McMonagle,* 868 F. 2d 1342 (CA3) (because the predicate offense does not require economic motive, RICO requires no additional economic motive), cert. denied, 493 U. S. 901 (1989).

II

We first address the threshold question raised by respondents whether petitioners have standing to bring their claim. Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation. *Bender* v. *Williamsport Area School Dist.,* 475 U. S. 534, 546–547 (1986). Respondents are correct that only DWHO and SWHO, and not NOW, have sued under RICO.[3] Despite the fact that the clinics attempted to bring the RICO claim as class actions, DWHO and SWHO must themselves have standing. *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26, 40, n. 20 (1976), citing *Warth* v. *Seldin,* 422 U. S. 490, 502 (1975). Respondents are wrong, however, in asserting that the complaint alleges no "injury" to DWHO and SWHO "fairly traceable to the defendant's allegedly unlawful conduct." *Allen* v. *Wright,* 468 U. S. 737, 751 (1984).

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[3] NOW sought class certification for itself, its women members who use or may use the targeted health centers, and other women who use or may use the services of such centers. The District Court did not certify the class, apparently deferring its ruling until resolution of the motions to dismiss. All pending motions were dismissed as moot when the court granted respondents' motion to dismiss. 765 F. Supp. 937, 945 (ND Ill. 1991).

We have held that "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 561 (1992) (citations omitted). The District Court dismissed petitioners' claim at the pleading stage pursuant to Federal Rule of Civil Procedure 12(b)(6), so their complaint must be sustained if relief could be granted "under any set of facts that could be proved consistent with the allegations." *Hishon* v. *King & Spalding,* 467 U. S. 69, 73 (1984). DWHO and SWHO alleged in their complaint that respondents conspired to use force to induce clinic staff and patients to stop working and obtain medical services elsewhere. App. 66, Second Amended Complaint ¶ 97. Petitioners claimed that this conspiracy "has injured the business and/or property interests of the [petitioners]." *Id.,* at 72, ¶ 104. In addition, petitioners claimed that respondent Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic. *Id.,* at 68, ¶ 98(g). Paragraphs 106 and 110 of petitioners' complaint incorporate these allegations into the § 1962(c) claim. *Id.,* at 72, 73. Nothing more is needed to confer standing on DWHO and SWHO at the pleading stage.

III

We turn to the question whether the racketeering enterprise or the racketeering predicate acts must be accompanied by an underlying economic motive. Section 1962(c) makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." Section 1961(1) defines "pattern of racketeering activity" to include conduct that is "chargeable" or "indictable" under a host of state and federal laws.[4] RICO broadly defines "enterprise" in § 1961(4) to "includ[e] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." Nowhere in either § 1962(c) or the RICO definitions in § 1961 is there any indication that an economic motive is required.

The phrase "any enterprise engaged in, or the activities of which affect, interstate or foreign commerce" comes the closest of any language in subsection (c) to suggesting a need for an economic motive. Arguably an enterprise engaged in interstate or foreign commerce would have a profit-seeking motive, but the language in § 1962(c) does not stop there; it includes enterprises whose activities "affect" interstate or foreign commerce. Webster's Third New International Dictionary 35 (1969) defines "affect" as "to have a detrimental influence on—used especially in the phrase *affecting commerce.*" An enterprise surely can have a detrimental influence on interstate or foreign commerce without having its own profit-seeking motives.

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[4] Section 1961(1) provides: "'racketeering activity' means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering) . . . (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States . . . ."

The Court of Appeals thought that the use of the term "enterprise" in §§ 1962(a) and (b), where it is arguably more tied in with economic motivation, should be applied to restrict the breadth of use of that term in § 1962(c). 968 F. 2d, at 629. Respondents agree and point to our comment in *Sedima, S. P. R. L.* v. *Imrex Co.,* 473 U. S. 479, 489 (1985), regarding the term "violation," that "[w]e should not lightly infer that Congress intended the term [violation] to have wholly different meanings in neighboring subsections."

We do not believe that the usage of the term "enterprise" in subsections (a) and (b) leads to the inference that an economic motive is required in subsection (c). The term "enterprise" in subsections (a) and (b) plays a different role in the structure of those subsections than it does in subsection (c). Section 1962(a) provides that it "shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." Correspondingly, § 1962(b) states that it "shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." The "enterprise" referred to in subsections (a) and (b) is thus something acquired through the use of illegal activities or by money obtained from illegal activities. The enterprise in these subsections is the victim of unlawful activity and may very well be a "profit-seeking" entity that represents a property interest and may be acquired. But the statutory language in subsections (a) and (b) does not mandate that the enterprise be a "profit-seeking" entity; it simply requires that the enterprise be an entity that was acquired through illegal activity or the money generated from illegal activity.

By contrast, the "enterprise" in subsection (c) connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed, rather than the victim of that activity. Subsection (c) makes it unlawful for "any person employed by or associated with any enterprise . . . to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity. . . ." Consequently, since the enterprise in subsection (c) is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity.[5] Nothing in subsections (a) and (b) directs us to a contrary conclusion.

The Court of Appeals also relied on the reasoning of *United States* v. *Bagaric*, 706 F. 2d 42 (CA2), cert. denied, 464 U. S. 840 (1983), to support its conclusion that subsection (c) requires an economic motive. In upholding the convictions, under RICO, of members of a political terrorist group, the *Bagaric* court relied in part on the congressional statement of findings which prefaces RICO and refers to the activities of groups that "'drai[n] billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption.'" 706 F. 2d, at 57, n. 13 (quoting OCCA, 84 Stat. 922). The Court of Appeals for the Second Circuit decided that the sort of activity thus condemned required an economic motive.

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[5] One commentator uses the terms "prize," "instrument," "victim," and "perpetrator" to describe the four separate roles the enterprise may play in § 1962. See Blakey, The RICO Civil Fraud Action in Context: Reflections on *Bennett v. Berg*, 58 Notre Dame L. Rev. 237, 307–325 (1982).

We do not think this is so. Respondents and the two Courts of Appeals, we think, overlook the fact that predicate acts, such as the alleged extortion, may not benefit the protesters financially but still may drain money from the economy by harming businesses such as the clinics which are petitioners in this case.

We also think that the quoted statement of congressional findings is a rather thin reed upon which to base a requirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act. As we said in *H. J. Inc.* v. *Northwestern Bell Telephone Co.,* 492 U. S. 229, 248 (1989): "The occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime."

In *United States* v. *Turkette,* 452 U. S. 576 (1981), we faced the analogous question whether "enterprise" as used in § 1961(4) should be confined to "legitimate" enterprises. Looking to the statutory language, we found that "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." *Id.,* at 580. Accordingly, we resolved that § 1961(4)'s definition of "enterprise" "appears to include both legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does legitimate ones." *Id.,* at 580–581. We noted that Congress could easily have narrowed the sweep of the term "enterprise" by inserting a single word, "legitimate." *Id.,* at 581. Instead, Congress did nothing to indicate that "enterprise" should exclude those entities whose sole purpose was criminal.

The parallel to the present case is apparent. Congress has not, either in the definitional section or in the operative language, required that an "enterprise" in § 1962(c) have an economic motive.

The Court of Appeals also found persuasive guidelines for RICO prosecutions issued by the Department of Justice in 1981. The guidelines provided that a RICO indictment should not charge an association as an enterprise, unless the association exists "'for the purpose of maintaining operations directed toward an *economic* goal . . . .'" *United States* v. *Ivic*, 700 F. 2d, at 64, quoting U. S. Dept. of Justice, United States Attorneys' Manual § 9–110.360 (1984) (emphasis added). The Second Circuit believed these guidelines were entitled to deference under administrative law principles. See 700 F. 2d, at 64. Whatever may be the appropriate deference afforded to such internal rules, see, *e. g.*, *Crandon* v. *United States*, 494 U. S. 152, 177 (1990) (SCALIA, J., concurring in judgment), for our purposes we need note only that the Department of Justice amended its guidelines in 1984. The amended guidelines provide that an association-in-fact enterprise must be "directed toward an economic *or other identifiable goal.*" U. S. Dept. of Justice, United States Attorney's Manual § 9–110.360 (Mar. 9, 1984) (emphasis added).

Both parties rely on legislative history to support their positions. We believe the statutory language is unambiguous and find in the parties' submissions respecting legislative history no such "clearly expressed legislative intent to the contrary" that would warrant a different construction. *Reves* v. *Ernst & Young*, 507 U. S. 170, 177 (1993), citing *United States* v. *Turkette*, *supra*, at 580, quoting *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 108 (1980).

Respondents finally argue that the result here should be controlled by the rule of lenity in criminal cases. But the rule of lenity applies only when an ambiguity is present; " 'it is not used to beget one. . . . The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers.' " *Turkette, supra,* at 587–588, n. 10, quoting *Callanan* v. *United States,* 364 U. S. 587, 596 (1961) (footnote omitted). We simply do not think there is an ambiguity here which would suffice to invoke the rule of lenity. " '[T]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' " *Sedima,* 473 U. S., at 499 (quoting *Haroco, Inc.* v. *American Nat. Bank & Trust Co. of Chicago,* 747 F. 2d 384, 398 (CA7 1984)).[6]

We therefore hold that petitioners may maintain this action if respondents conducted the enterprise through a pattern of racketeering activity. The questions whether respondents committed the requisite predicate acts, and whether the commission of these acts fell into a pattern, are not before us. We hold only that RICO contains no economic motive requirement.

The judgment of the Court of Appeals is accordingly

Reversed.

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[6] Several of the respondents and several *amici* argue that application of RICO to antiabortion protesters could chill legitimate expression protected by the First Amendment. However, the question presented for review asked simply whether the Court should create an unwritten requirement limiting RICO to cases where either the enterprise or racketeering activity has an overriding economic motive. None of the respondents made a constitutional argument as to the proper construction of RICO in the Court of Appeals, and their constitutional argument here is directed almost entirely to the nature of their activities, rather than to the construction of RICO. We therefore decline to address the First Amendment question argued by respondents and the *amici.*

JUSTICE SOUTER, with whom JUSTICE KENNEDY joins, concurring.

I join the Court's opinion and write separately to explain why the First Amendment does not require reading an economic-motive requirement into the Racketeer Influenced and Corrupt Organizations Act (RICO or statute), and to stress that the Court's opinion does not bar First Amendment challenges to RICO's application in particular cases.

Several respondents and *amici* argue that we should avoid the First Amendment issues that could arise from allowing RICO to be applied to protest organizations by construing the statute to require economic motivation, just as we have previously interpreted other generally applicable statutes so as to avoid First Amendment problems. See, *e. g., Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127, 138 (1961) (holding that antitrust laws do not apply to businesses combining to lobby the government, even where such conduct has an anticompetitive purpose and an anticompetitive effect, because the alternative "would raise important constitutional questions" under the First Amendment); see also *Lucas* v. *Alexander*, 279 U. S. 573, 577 (1929) (a law "must be construed with an eye to possible constitutional limitations so as to avoid doubts as to its validity"). The argument is meritless in this case, though, for this principle of statutory construction applies only when the meaning of a statute is in doubt, see *Noerr, supra,* and here "the statutory language is unambiguous," *ante,* at 261.

Even if the meaning of RICO were open to debate, however, it would not follow that the statute ought to be read to include an economic-motive requirement, since such a requirement would correspond only poorly to free-speech concerns. Respondents and *amici* complain that, unless so limited, the statute permits an ideological organization's opponents to label its vigorous expression as RICO predicate acts, thereby availing themselves of powerful remedial provisions that could destroy the organization. But an economic-motive requirement would protect too much with respect to First Amendment interests, since it would keep RICO from reaching ideological entities whose members commit acts of violence we need not fear chilling. An economic-motive requirement might also prove to be underprotective, in that entities engaging in vigorous but fully protected expression might fail the proposed economic-motive test (for even protest movements need money) and so be left exposed to harassing RICO suits.

An economic-motive requirement is, finally, unnecessary, because legitimate free-speech claims may be raised and addressed in individual RICO cases as they arise. Accordingly, it is important to stress that nothing in the Court's opinion precludes a RICO defendant from raising the First Amendment in its defense in a particular case. Conduct alleged to amount to Hobbs Act extortion, for example, or one of the other, somewhat elastic RICO predicate acts may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis. See *NAACP* v. *Claiborne Hardware Co.*, 458 U. S. 886, 917 (1982) (holding that a state common-law prohibition on malicious interference with business could not, under the circumstances, be constitutionally applied to a civil-rights boycott of white merchants). And even in a case where a RICO violation has been validly established, the First Amendment may limit the relief that can be granted against an organization otherwise engaging in protected expression. See *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449 (1958) (invalidating under the First Amendment a court order compelling production of the NAACP's membership lists, issued to enforce Alabama's requirements for out-of-state corporations doing business in the State). See also *NAACP* v. *Claiborne Hardware Co., supra,* at 930–932 (discussing First Amendment limits on the assessment of derivative liability against ideological organizations); *Oregon Natural Resources Council* v. *Mohla,* 944 F. 2d 531 (CA9 1991) (applying a heightened pleading standard to a complaint based on presumptively protected First Amendment conduct).

This is not the place to catalog the speech issues that could arise in a RICO action against a protest group, and I express no view on the possibility of a First Amendment claim by the respondents in this case (since, as the Court observes, such claims are outside the question presented, see *ante,* at 262, n. 6). But I think it prudent to notice that RICO actions could deter protected advocacy and to caution courts applying RICO to bear in mind the First Amendment interests that could be at stake.

ALBRIGHT *v.* OLIVER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 92–833. Argued October 12, 1993—Decided January 24, 1994

Upon learning that Illinois authorities had issued an arrest warrant charging him with the sale of a substance which looked like an illegal drug, petitioner Albright surrendered to respondent Oliver, a policeman, and was released after posting bond. At a preliminary hearing, Oliver testified that Albright sold the look-alike substance to a third party, and the court found probable cause to bind Albright over for trial. However, the court later dismissed the action on the ground that the charge did not state an offense under state law. Albright then filed this suit under 42 U. S. C. § 1983, alleging that Oliver deprived him of substantive due process under the Fourteenth Amendment—his "liberty interest"—to be free from criminal prosecution except upon probable cause. The District Court dismissed on the ground that the complaint did not state a claim under § 1983. The Court of Appeals affirmed, holding that prosecution without probable cause is a constitutional tort actionable under § 1983 only if accompanied by incarceration, loss of employment, or some other "palpable consequenc[e]."

Held: The judgment is affirmed.

975 F. 2d 343, affirmed.

CHIEF JUSTICE REHNQUIST, joined by JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE GINSBURG, concluded that Albright's claimed right to be free from prosecution without probable cause must be judged under the Fourth Amendment, and that substantive due process, with its "scarce and open-ended" "guideposts for responsible decisionmaking," *Collins* v. *Harker Heights*, 503 U. S. 115, 125, can afford Albright no relief. Where a particular Amendment "provides an explicit textual source of constitutional protection" against a particular sort of government behavior, "that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing" such a claim. *Graham* v. *Connor*, 490 U. S. 386, 395. The Fourth Amendment addresses the matter of pretrial deprivations of liberty, and the Court has noted that Amendment's relevance to the liberty deprivations that go hand in hand with criminal prosecutions. See *Gerstein* v. *Pugh*, 420 U. S. 103, 114. The Court has said that the accused is not "entitled to judicial oversight or review of the decision to prosecute." *Id.*, at 118–

119. But Albright was not merely charged; he submitted himself to arrest. No view is expressed as to whether his claim would succeed under the Fourth Amendment, since he has not presented the question in his certiorari petition. Pp. 271–275.

JUSTICE KENNEDY, joined by JUSTICE THOMAS, determined that Albright's due process claim concerns not his arrest but instead the malicious initiation of a baseless criminal prosecution against him. The due process requirements for criminal proceedings do not include a standard for the initiation of a prosecution. Moreover, even assuming, *arguendo*, that the common-law interest in freedom from malicious prosecution is protected by the Due Process Clause, there is neither need nor legitimacy in invoking 42 U. S. C. § 1983 in this case, given the fact that Illinois provides a tort remedy for malicious prosecution and the Court's holding in *Parratt* v. *Taylor*, 451 U. S. 527, 535–544, that a state actor's random and unauthorized deprivation of such a due process interest cannot be challenged under § 1983 so long as the State provides an adequate postdeprivation remedy. Pp. 281–286.

JUSTICE SOUTER concluded that, because this case presents no substantial burden on liberty beyond what the Fourth Amendment is generally thought to redress already, petitioner has not justified recognition of a substantive due process violation in his prosecution without probable cause. Substantive due process should be reserved for otherwise homeless substantial claims, and should not be relied on when doing so will duplicate protection that a more specific constitutional provision already bestows. Petitioner's asserted injuries—including restraints on his movement, damage to his reputation, and mental anguish—are not alleged to have flowed from the formal instrument of prosecution, as distinct from the ensuing police seizure of his person; have been treated by the Courts of Appeals as within the ambit of compensability under 42 U. S. C. § 1983 for Fourth Amendment violations; and usually occur only after an arrest or other seizure. Pp. 286–291.

REHNQUIST, C. J., announced the judgment of the Court and delivered an opinion, in which O'CONNOR, SCALIA, and GINSBURG, JJ., joined. SCALIA, J., *post*, p. 275, and GINSBURG, J., *post*, p. 276, filed concurring opinions. KENNEDY, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 281. SOUTER, J., filed an opinion concurring in the judgment, *post*, p. 286. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post*, p. 291.

John H. Bisbee argued the cause for petitioner. With him on the briefs was *Barry Nakell*.

James G. Sotos argued the cause for respondents. With him on the brief were *Michael W. Condon, Charles E. Hervas,* and *Michael D. Bersani.**

CHIEF JUSTICE REHNQUIST announced the judgment of the Court and delivered an opinion, in which JUSTICE O'CONNOR, JUSTICE SCALIA, and JUSTICE GINSBURG join.

A warrant was issued for petitioner's arrest by Illinois authorities, and upon learning of it he surrendered and was released on bail. The prosecution was later dismissed on the ground that the charge did not state an offense under Illinois law. Petitioner asks us to recognize a substantive right under the Due Process Clause of the Fourteenth Amendment to be free from criminal prosecution except upon probable cause. We decline to do so.

We review a decision of the Court of Appeals for the Seventh Circuit affirming the grant of a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and we must therefore accept the well-pleaded allegations of the complaint as true. Illinois authorities issued an arrest warrant for petitioner Kevin Albright, charging him on the basis of a previously filed criminal information with the sale of a substance which looked like an illegal drug. When he learned of the outstanding warrant, petitioner surrendered to respondent, Roger Oliver, a police detective employed by the city of Macomb, but denied his guilt of such an offense. He was released after posting bond, one of the conditions of which was that he not leave the State without permission of the court.[1]

**Leon Friedman, Steven R. Shapiro, John A. Powell,* and *Harvey Grossman* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging reversal.

Richard Ruda filed a brief for the National League of Cities et al. as *amici curiae* urging affirmance.

[1] Before the criminal information was filed, one Veda Moore, an undercover informant, had told Oliver that she bought cocaine from one John Albright, Jr., at a student hotel in Macomb. The "cocaine" turned out to

At a preliminary hearing, respondent Oliver testified that petitioner sold the look-alike substance to Moore, and the court found probable cause to bind petitioner over for trial. At a later pretrial hearing, the court dismissed the criminal action against petitioner on the ground that the charge did not state an offense under Illinois law.

Albright then instituted this action under Rev. Stat. § 1979, 42 U. S. C. § 1983, against Detective Oliver in his individual and official capacities, alleging that Oliver deprived him of substantive due process under the Fourteenth Amendment—his "liberty interest"—to be free from criminal prosecution except upon probable cause.[2] The District Court granted respondent's motion to dismiss under Rule 12(b)(6) on the ground that the complaint did not state a claim under § 1983.[3] The Court of Appeals for the Seventh Circuit affirmed, 975 F. 2d 343 (1992), relying on our decision in *Paul* v. *Davis*, 424 U. S. 693 (1976). The Court of Appeals held that prosecution without probable cause is a constitutional tort actionable under § 1983 only if accompanied by incarceration or loss of employment or some other "palpable

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be baking powder, however, and the grand jury indicted John Albright, Jr., for selling a "look-alike" substance. When Detective Oliver went to serve the arrest warrant, he discovered that John Albright, Jr., was a retired pharmacist in his sixties, and apparently realized he was on a false scent. After discovering that it could not have been the elderly Albright's son, John David, who was involved in the incident, Detective Oliver contacted Moore to see if the sale was actually made by petitioner Kevin Albright, a second son of John Albright, Jr. Moore confirmed that petitioner Kevin Albright made the sale.

[2] The complaint also named the city of Macomb as a defendant to the § 1983 action and charged a common-law malicious prosecution claim against Detective Oliver.

[3] The District Court also held that Detective Oliver was entitled to a defense of qualified immunity, and that the complaint failed to allege facts sufficient to support municipal liability against the city of Macomb. The District Court also dismissed without prejudice the common-law claim of malicious prosecution against Detective Oliver. These issues are not before this Court.

consequenc[e]." 975 F. 2d, at 346–347. The panel of the Seventh Circuit reasoned that "just as in the garden-variety public-officer defamation case that does not result in exclusion from an occupation, state tort remedies should be adequate and the heavy weaponry of constitutional litigation can be left at rest." *Id.*, at 347.[4] We granted certiorari, 507

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[4] As noted by the Court of Appeals below, the extent to which a claim of malicious prosecution is actionable under § 1983 is one "on which there is an embarrassing diversity of judicial opinion." 975 F. 2d, at 345, citing *Brummett* v. *Camble*, 946 F. 2d 1178, 1180, n. 2 (CA5 1991) (cataloging divergence of approaches by the Courts of Appeals). Most of the lower courts recognize some form of malicious prosecution action under § 1983. The disagreement among the courts concerns whether malicious prosecutions, standing alone, can violate the Constitution. The most expansive approach is exemplified by the Third Circuit, which holds that the elements of a malicious prosecution action under § 1983 are the same as the common-law tort of malicious prosecution. See, *e. g., Lee* v. *Mihalich*, 847 F. 2d 66, 70 (1988) ("[T]he elements of liability for the constitutional tort of malicious prosecution under § 1983 coincide with those of the common law tort"). See also *Sanders* v. *English*, 950 F. 2d 1152, 1159 (CA5 1992) ("[O]ur circuit recognizes causes of action under § 1983 for false arrest, illegal detention . . . and malicious prosecution" because these causes of action "implicate the constitutional 'guarantees of the fourth and fourteenth amendments' "); *Robinson* v. *Maruffi*, 895 F. 2d 649 (CA10 1990); *Strength* v. *Hubert*, 854 F. 2d 421, 426, and n. 5 (CA11 1988) (recognizing that "freedom from malicious prosecution is a federal right protected by § 1983"). Other Circuits, however, require a showing of some injury or deprivation of a constitutional magnitude in addition to the traditional elements of common-law malicious prosecution. The exact standards announced by the courts escape easy classification. See, *e. g., Torres* v. *Superintendent of Police of Puerto Rico*, 893 F. 2d 404, 409 (CA1 1990) (the challenged conduct must be "so egregious that it violated substantive or procedural due process rights under the Fourteenth Amendment"); *Usher* v. *Los Angeles*, 828 F. 2d 556, 561–562 (CA9 1987) ("[T]he general rule is that a claim of malicious prosecution is not cognizable under 42 U. S. C. § 1983 if process is available within the state judicial system to provide a remedy . . . . However, 'an exception exists to the general rule when a malicious prosecution is conducted with the intent to deprive a person of equal protection of the laws or is otherwise intended to subject a person to a denial of constitutional rights' "); *Coogan* v. *Wixom*, 820 F. 2d 170, 175 (CA6 1987) (in addition to elements of malicious prosecution under

U. S. 959 (1993), and while we affirm the judgment below, we do so on different grounds. We hold that it is the Fourth Amendment, and not substantive due process, under which petitioner Albright's claim must be judged.

Section 1983 "is not itself a source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker* v. *McCollan*, 443 U. S. 137, 144, n. 3 (1979). The first step in any such claim is to identify the specific constitutional right allegedly infringed. *Graham* v. *Connor*, 490 U. S. 386, 394 (1989); and *Baker* v. *McCollan*, *supra*, at 140.

Petitioner's claim before this Court is a very limited one. He claims that the action of respondents infringed his substantive due process right to be free of prosecution without probable cause. He does not claim that Illinois denied him the procedural due process guaranteed by the Fourteenth Amendment. Nor does he claim a violation of his Fourth Amendment rights, notwithstanding the fact that his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment. *Terry* v. *Ohio*, 392 U. S. 1, 19 (1968); *Brower* v. *County of Inyo*, 489 U. S. 593, 596 (1989).[5]

We begin analysis of petitioner's claim by repeating our observation in *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992). "As a general matter, the Court has always been reluctant to expand the concept of substantive due process

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state law, plaintiff must show an egregious misuse of a legal proceeding resulting in a constitutional deprivation). In holding that malicious prosecution is not actionable under § 1983 unless it is accompanied by incarceration, loss of protected status, or some other palpable consequence, the Seventh Circuit's decision below places it in this latter camp. In view of our disposition of this case, it is evident that substantive due process may not furnish the constitutional peg on which to hang such a "tort."

[5] Thus, Albright may have missed the statute of limitations for any claim he had based on an unconstitutional arrest or seizure. 975 F. 2d 343, 345 (CA7 1992). We express no opinion as to the timeliness of any such claim he might have.

because the guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity. See, *e. g., Planned Parenthood of Southeastern Pa.* v. *Casey,* 505 U. S. 833, 847–849 (1992) (describing cases in which substantive due process rights have been recognized). Petitioner's claim to be free from prosecution except on the basis of probable cause is markedly different from those recognized in this group of cases.

Petitioner relies on our observations in cases such as *United States* v. *Salerno,* 481 U. S. 739, 746 (1987), and *Daniels* v. *Williams,* 474 U. S. 327, 331 (1986), that the Due Process Clause of the Fourteenth Amendment confers both substantive and procedural rights. This is undoubtedly true, but it sheds little light on the scope of substantive due process. Petitioner points in particular to language from *Hurtado* v. *California,* 110 U. S. 516, 527 (1884), later quoted in *Daniels, supra,* stating that the words "by the law of the land" from the Magna Carta were "'intended to secure the individual from the arbitrary exercise of the powers of government.'" This, too, may be freely conceded, but it does not follow that, in all of the various aspects of a criminal prosecution, the only inquiry mandated by the Constitution is whether, in the view of the Court, the governmental action in question was "arbitrary."

Hurtado held that the Due Process Clause did not make applicable to the States the Fifth Amendment's requirement that all prosecutions for an infamous crime be instituted by the indictment of a grand jury. In the more than 100 years which have elapsed since *Hurtado* was decided, the Court has concluded that a number of the procedural protections contained in the Bill of Rights were made applicable to the States by the Fourteenth Amendment. See *Mapp* v. *Ohio,* 367 U. S. 643 (1961), overruling *Wolf* v. *Colorado,* 338 U. S.

25 (1949), and holding the Fourth Amendment's exclusionary rule applicable to the States; *Malloy* v. *Hogan*, 378 U. S. 1 (1964), overruling *Twining* v. *New Jersey*, 211 U. S. 78 (1908), and holding the Fifth Amendment's privilege against self-incrimination applicable to the States; *Benton* v. *Maryland*, 395 U. S. 784 (1969), overruling *Palko* v. *Connecticut*, 302 U. S. 319 (1937), and holding the Double Jeopardy Clause of the Fifth Amendment applicable to the States; *Gideon* v. *Wainwright*, 372 U. S. 335 (1963), overruling *Betts* v. *Brady*, 316 U. S. 455 (1942), and holding that the Sixth Amendment's right to counsel was applicable to the States. See also *Klopfer* v. *North Carolina*, 386 U. S. 213 (1967) (Sixth Amendment speedy trial right applicable to the States); *Washington* v. *Texas*, 388 U. S. 14 (1967) (Sixth Amendment right to compulsory process applicable to the States); *Duncan* v. *Louisiana*, 391 U. S. 145 (1968) (Sixth Amendment right to jury trial applicable to the States).

This course of decision has substituted, in these areas of criminal procedure, the specific guarantees of the various provisions of the Bill of Rights embodied in the first 10 Amendments to the Constitution for the more generalized language contained in the earlier cases construing the Fourteenth Amendment. It was through these provisions of the Bill of Rights that their Framers sought to restrict the exercise of arbitrary authority by the Government in particular situations. Where a particular Amendment "provides an explicit textual source of constitutional protection" against a particular sort of government behavior, "that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Graham* v. *Connor*, *supra*, at 395.[6]

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[6] JUSTICE STEVENS' dissent faults us for ignoring, *inter alia*, our decision in *In re Winship*, 397 U. S. 358 (1970). *Winship* undoubtedly rejected the notion that all of the required incidents of a fundamentally fair trial were to be found in the provisions of the Bill of Rights, but it did so as a matter of procedural due process: " 'This notion [that the government must prove

We think this principle is likewise applicable here. The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it. The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

We have in the past noted the Fourth Amendment's relevance to the deprivations of liberty that go hand in hand with criminal prosecutions. See *Gerstein* v. *Pugh,* 420 U. S. 103, 114 (1975) (holding that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to any extended restraint on liberty following an arrest). We have said that the accused is not "entitled to judicial oversight or review of the decision to prosecute." *Id.,* at 118–119. See also *Beck* v. *Washington,* 369 U. S. 541, 545 (1962); *Lem Woon* v. *Oregon,* 229 U. S. 586 (1913). But here petitioner was not merely charged; he submitted himself to arrest.

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the elements of a criminal case beyond a reasonable doubt]—basic in our law and rightly one of the boasts of a free society—is a requirement and a safeguard of due process of law in the historic, procedural content of "due process."'" *Id.,* at 362, quoting *Leland* v. *Oregon,* 343 U. S. 790, 802–803 (1952) (Frankfurter, J., dissenting).

Similarly, other cases relied on by the dissent, including *Mooney* v. *Holohan,* 294 U. S. 103 (1935), *Napue* v. *Illinois,* 360 U. S. 264 (1959), *Brady* v. *Maryland,* 373 U. S. 83 (1963), *Giglio* v. *United States,* 405 U. S. 150 (1972), and *United States* v. *Agurs,* 427 U. S. 97 (1976), were accurately described in the latter opinion as "dealing with the defendant's right to a fair trial mandated by the Due Process Clause of the Fifth Amendment to the Constitution." *Id.,* at 107.

We express no view as to whether petitioner's claim would succeed under the Fourth Amendment, since he has not presented that question in his petition for certiorari. We do hold that substantive due process, with its "scarce and open-ended" "guideposts," *Collins* v. *Harker Heights*, 503 U. S., at 125, can afford him no relief.[7]

The judgment of the Court of Appeals is therefore

Affirmed.

JUSTICE SCALIA, concurring.

One can conceive of many abuses of the trial process (for example, the use of a patently biased judge, see *Mayberry* v. *Pennsylvania*, 400 U. S. 455, 465–466 (1971)) that might cause a criminal sentence to be a deprivation of life, liberty or property *without due process.* But here there was no criminal sentence (the indictment was dismissed), and so the only deprivation of life, liberty or property, if any, consisted of petitioner's pretrial arrest. I think it unlikely that the procedures constitutionally "due," with regard to an arrest, consist of anything more than what the Fourth Amendment specifies; but petitioner has in any case not invoked "procedural" due process.

Except insofar as our decisions have included within the Fourteenth Amendment certain explicit substantive protections of the Bill of Rights—an extension I accept because it is both long established and narrowly limited—I reject the proposition that the Due Process Clause guarantees certain (unspecified) liberties, rather than merely guarantees certain procedures as a prerequisite to deprivation of liberty. See *TXO Production Corp.* v. *Alliance Resources Corp.*, 509 U. S.

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[7] Petitioner appears to have argued in the Court of Appeals some variant of a violation of his constitutional right to interstate travel because of the condition imposed upon him pursuant to his release on bond. But he has not presented any such question in his petition for certiorari and has not briefed the issue here. We therefore do not consider it.

443, 470–471 (1993) (SCALIA, J., concurring). As I have acknowledged, however, see *Michael H.* v. *Gerald D.*, 491 U. S. 110, 121 (1989) (opinion of SCALIA, J.), this Court's current jurisprudence is otherwise. But that jurisprudence rejects "the more generalized notion of 'substantive due process'" at least to this extent: It cannot be used to impose additional requirements upon such of the States' criminal processes as are already addressed (and left without such requirements) by the Bill of Rights. *Graham* v. *Connor*, 490 U. S. 386, 395 (1989). That proscription applies here. The Bill of Rights sets forth, in the Fifth and Sixth Amendments, procedural guarantees relating to the period before and during trial, including a guarantee (the Grand Jury Clause) regarding the manner of indictment. Those requirements are not to be supplemented through the device of "substantive due process."

For these reasons, in addition to those set forth by THE CHIEF JUSTICE, the judgment here should be affirmed.

JUSTICE GINSBURG, concurring.

I agree with the plurality that Albright's claim against the police officer responsible for his arrest is properly analyzed under the Fourth Amendment rather than under the heading of substantive due process. See *ante*, at 271. I therefore join the plurality opinion and write separately to indicate more particularly my reasons for viewing this case through a Fourth Amendment lens.

Albright's factual allegations convey that Detective Oliver notoriously disobeyed the injunction against unreasonable seizures imposed on police officers by the Fourth Amendment, and Albright appropriately invoked that Amendment as a basis for his claim. See App. to Pet. for Cert. A–37, A–53. Albright's submission to arrest unquestionably constituted a seizure for purposes of the Fourth Amendment. See *ante*, at 271. And, as the Court of Appeals recognized, if the facts were as Albright alleged, then Oliver lacked cause to suspect, let alone apprehend him. 975 F. 2d 343, 345 (CA7 1992); see *post*, at 292–293 (STEVENS, J., dissenting).

Yet in his presentations before this Court, Albright deliberately subordinated invocation of the Fourth Amendment and pressed, instead, a substantive due process right to be free from prosecution without probable cause.[1] This strategic decision appears to have been predicated on two doubtful assumptions, the first relating to the compass of the Fourth Amendment, the second, to the time frame for commencing this civil action.

Albright may have feared that courts would narrowly define the Fourth Amendment's key term "seizure" so as to deny full scope to his claim. In particular, he might have anticipated a holding that the "seizure" of his person ended when he was released from custody on bond, and a corresponding conclusion that Oliver's allegedly misleading testimony at the preliminary hearing escaped Fourth Amendment interdiction.[2]

The Fourth Amendment's instruction to police officers seems to me more purposive and embracing. This Court has noted that the common law may aid contemporary inquiry into the meaning of the Amendment's term "seizure." See *California* v. *Hodari D.*, 499 U. S. 621, 626, n. 2 (1991). At common law, an arrested person's seizure was deemed to continue even after release from official custody. See, *e. g.*, 2 M. Hale, Pleas of the Crown *124 ("he that is bailed, is in supposition of law still in custody, and the parties that take him to bail are in law his keepers"); 4 W. Blackstone, Commentaries *297 (bail in both civil and criminal cases is "a delivery or bailment, of a person to his sureties, . . . he being supposed to continue in their friendly custody, instead of going to gaol"). The purpose of an arrest at common law, in both criminal and civil cases, was "only to compel an appearance in court," and "that purpose is equally answered, whether the sheriff detains [the suspect's] person, or takes sufficient security for his appearance, called bail." 3 *id.*, at *290 (civil cases); 4 *id.*, at *297 (nature of bail is the same in criminal and civil cases). The common law thus seems to have regarded the difference between pretrial incarceration and other ways to secure a defendant's court attendance as a distinction between methods of retaining control over a defendant's person, not one between seizure and its opposite.[3]

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[1] Albright's presentations essentially carve up the officer's conduct, though all part of a single scheme, so that the actions complained of match common-law tort categories: first, false arrest (Fourth Amendment's domain); next, malicious prosecution (Fifth Amendment territory). In my view, the constitutional tort 42 U. S. C. § 1983 authorizes stands on its own, influenced by the substance, but not tied to the formal categories and procedures, of the common law. According the Fourth Amendment full sway, I would not force Albright's case into a different mold.

[2] Such a concern might have stemmed from Seventh Circuit precedent set before *Graham* v. *Connor*, 490 U. S. 386 (1989). See *Wilkins* v. *May*, 872 F. 2d 190, 192–195 (1989) (substantive due process "shock the conscience" standard, not Fourth Amendment, applies to brutal "post-arrest pre-charge" interrogation).

This view of the definition and duration of a seizure comports with common sense and common understanding. A person facing serious criminal charges is hardly freed from the state's control upon his release from a police officer's physical grip. He is required to appear in court at the state's command. He is often subject, as in this case, to the condition that he seek formal permission from the court (at significant expense) before exercising what would otherwise be his unquestioned right to travel outside the jurisdiction. Pending prosecution, his employment prospects may be diminished severely, he may suffer reputational harm, and he will experience the financial and emotional strain of preparing a defense.

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[3] For other purposes, *e. g.*, to determine the proper place for condemnation trials, "seizure" traditionally had a time- and site-specific meaning. See *Thompson* v. *Whitman*, 18 Wall. 457, 471 (1874) ("seizure [of a sloop] is a single act"; "[p]ossession, which follows seizure, is continuous").

A defendant incarcerated until trial no doubt suffers greater burdens. That difference, however, should not lead to the conclusion that a defendant released pretrial is not still "seized" in the constitutionally relevant sense. Such a defendant is scarcely at liberty; he remains apprehended, arrested in his movements, indeed "seized" for trial, so long as he is bound to appear in court and answer the state's charges. He is equally bound to appear, and is hence "seized" for trial, when the state employs the less strong-arm means of a summons in lieu of arrest to secure his presence in court.[4]

This conception of a seizure and its course recognizes that the vitality of the Fourth Amendment depends upon its constant observance by police officers. For Oliver, the Fourth Amendment governed both the manner of, and the cause for, arresting Albright. If Oliver gave misleading testimony at the preliminary hearing, that testimony served to maintain and reinforce the unlawful haling of Albright into court, and so perpetuated the Fourth Amendment violation.[5]

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[4] On the summons-and-complaint alternative to custodial arrest, see 2 W. LaFave, Search and Seizure 432–436 (2d ed. 1987).

[5] Albright's reliance on a "malicious prosecution" theory, rather than a Fourth Amendment theory, is anomalous. The principal player in carrying out a prosecution—in "the formal commencement of a criminal proceeding," see *post*, at 295 (STEVENS, J., dissenting)—is not police officer but prosecutor. Prosecutors, however, have absolute immunity for their conduct. See *Burns* v. *Reed*, 500 U. S. 478, 487–492 (1991). Under Albright's substantive due process theory, the star player is exonerated, but the supporting actor is not.

In fact, Albright's theory might succeed in exonerating the supporting actor as well. By focusing on the police officer's role in initiating and pursuing a criminal prosecution, rather than his role in effectuating and maintaining a seizure, Albright's theory raises serious questions about whether the police officer would be entitled to share the prosecutor's absolute immunity. See *post*, at 308–309, n. 26 (STEVENS, J., dissenting) (noting that the issue is open); cf. *Briscoe* v. *LaHue*, 460 U. S. 325, 326 (1983) (holding that § 1983 does not "authoriz[e] a convicted person to assert a claim for damages against a police officer for giving perjured testimony at

A second reason for Albright's decision not to pursue a Fourth Amendment claim concerns the statute of limitations. The Court of Appeals suggested in dictum that any Fourth Amendment claim Albright might have had accrued on the date of his arrest, and that the applicable 2-year limitations period expired before the complaint was filed.[6] 975 F. 2d, at 345. Albright expressed his acquiescence in this view at oral argument. Tr. of Oral Arg. 13, 20–21.

Once it is recognized, however, that Albright remained effectively "seized" for trial so long as the prosecution against him remained pending, and that Oliver's testimony at the preliminary hearing, if deliberately misleading, violated the Fourth Amendment by perpetuating the seizure, then the limitations period should have a different trigger. The time to file the § 1983 action should begin to run not at the start, but at the end of the episode in suit, *i. e.*, upon dismissal of the criminal charges against Albright. See *McCune* v. *Grand Rapids*, 842 F. 2d 903, 908 (CA6 1988) (Guy, J., concurring in result) ("Where . . . innocence is what makes the state action wrongful, it makes little sense to require a federal suit to be filed until innocence or its equivalent is established by the termination of the state procedures in a manner favorable to the state criminal defendant."). In sum, Albright's Fourth Amendment claim, asserted within the requisite period after dismissal of the criminal action, in my judgment was neither substantively deficient nor inevitably time barred. It was, however, a claim Albright abandoned in the District Court and did not attempt to reassert in this Court.

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his criminal trial"). A right to sue someone who is absolutely immune from suit would hardly be a right worth pursuing.

[6] In § 1983 actions, federal courts apply the state statute of limitations governing actions for personal injury. See *Wilson* v. *Garcia*, 471 U. S. 261, 276–280 (1985). The question when the limitations period begins to run, however, is one of federal law. See *id.*, at 268–271; see generally *Connors* v. *Hallmark & Son Coal Co.*, 935 F. 2d 336, 341 (CADC 1991) (collecting cases).

The principle of party presentation cautions decisionmakers against asserting it for him. See *ante*, at 275.

* * *

In *Graham* v. *Connor*, 490 U. S. 386 (1989), this Court refused to analyze under a "substantive due process" heading an individual's right to be free from police applications of excessive force. "Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of . . . governmental conduct," we said, "that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Id.*, at 395. I conclude that the Fourth Amendment similarly proscribes the police misconduct Albright alleges. I therefore resist in this case the plea "to break new ground," see *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992), in a field—substantive due process—that "has at times been a treacherous [one] for this Court." See *Moore* v. *East Cleveland*, 431 U. S. 494, 502 (1977) (opinion of Powell, J.).

JUSTICE KENNEDY, with whom JUSTICE THOMAS joins, concurring in the judgment.

I agree with the plurality that an allegation of arrest without probable cause must be analyzed under the Fourth Amendment without reference to more general considerations of due process. But I write because Albright's due process claim concerns not his arrest but instead the malicious initiation of a baseless criminal prosecution against him.

I

The State must, of course, comply with the constitutional requirements of due process before it convicts and sentences a person who has violated state law. The initial question here is whether the due process requirements for criminal proceedings include a standard for the initiation of a prosecution.

The specific provisions of the Bill of Rights neither impose a standard for the initiation of a prosecution, see U. S. Const., Amdts. 5, 6, nor require a pretrial hearing to weigh evidence according to a given standard, see *Gerstein* v. *Pugh*, 420 U. S. 103, 119 (1975) ("[A] judicial hearing is not prerequisite to prosecution"); *Costello* v. *United States*, 350 U. S. 359, 363 (1956) ("An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, . . . is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more") (footnote omitted). Instead, the Bill of Rights requires a grand jury indictment and a speedy trial where a petit jury can determine whether the charges are true. Amdts. 5, 6.

To be sure, we have held that a criminal rule or procedure that does not contravene one of the more specific guarantees of the Bill of Rights may nonetheless violate the Due Process Clause if it "'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Medina* v. *California*, 505 U. S. 437, 445 (1992) (quoting *Patterson* v. *New York*, 432 U. S. 197, 202 (1977)). With respect to the initiation of charges, however, the specific guarantees contained in the Bill of Rights mirror the traditional requirements of the criminal process. The common law provided for a grand jury indictment and a speedy trial; it did not provide a specific evidentiary standard applicable to a pretrial hearing on the merits of the charges or subject to later review by the courts. See *United States* v. *Williams*, 504 U. S. 36, 51 (1992); *Costello*, *supra*, at 362–363; *United States* v. *Reed*, 27 F. Cas. 727, 738 (No. 16,134) (CC NDNY 1852) (Nelson, J.) ("No case has been cited, nor have we been able to find any, furnishing an authority for looking into and revising the judgment of the grand jury upon the evidence, for the purpose of determining whether or not the finding was founded upon sufficient proof").

Moreover, because the Constitution requires a speedy trial but no pretrial hearing on the sufficiency of the charges (leaving aside the question of extended pretrial detention, see *County of Riverside* v. *McLaughlin,* 500 U. S. 44 (1991)), any standard governing the initiation of charges would be superfluous in providing protection during the criminal process. If the charges are not proved beyond a reasonable doubt at trial, the charges are dismissed; if the charges are proved beyond a reasonable doubt at trial, any standard applicable to the initiation of charges is irrelevant because it is perforce met. This case thus differs in kind from *In re Winship,* 397 U. S. 358 (1970), and the other criminal cases where we have recognized due process requirements not specified in the Bill of Rights. The constitutional requirements we enforced in those cases ensured fundamental fairness in the determination of guilt at trial. See, *e. g., Mooney* v. *Holohan,* 294 U. S. 103, 112 (1935) (due process prohibits "deliberate deception of court and jury" by prosecution's knowing use of perjured testimony); *ante,* at 273–274, n. 6.

In sum, the due process requirements for criminal proceedings do not include a standard for the initiation of a criminal prosecution.

II

That may not be the end of the due process inquiry, however. The common law of torts long recognized that a malicious prosecution, like a defamatory statement, can cause unjustified torment and anguish—both by tarnishing one's name and by costing the accused money in legal fees and the like. See generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 119, pp. 870–889 (5th ed. 1984); T. Cooley, Law of Torts 180–187 (1879). We have held, of course, that the Due Process Clause protects interests other than the interest in freedom from physical restraint, see *Michael H.* v. *Gerald D.,* 491 U. S. 110, 121 (1989), and for purposes of this case, we can assume, *arguendo,* that some of the interests granted historical protection by the common law of torts (such as the interests in freedom from defamation and malicious prosecution) are protected by the Due Process Clause. Even so, our precedents make clear that a state actor's random and unauthorized deprivation of that interest cannot be challenged under 42 U. S. C. § 1983 so long as the State provides an adequate postdeprivation remedy. *Parratt* v. *Taylor,* 451 U. S. 527, 535–544 (1981); see *Hudson* v. *Palmer,* 468 U. S. 517, 531–536 (1984); *Ingraham* v. *Wright,* 430 U. S. 651, 674–682 (1977); *id.,* at 701 (STEVENS, J., dissenting) ("adequate state remedy for defamation may satisfy the due process requirement when a State has impaired an individual's interest in his reputation").

The commonsense teaching of *Parratt* is that some questions of property, contract, and tort law are best resolved by state legal systems without resort to the federal courts, even when a state actor is the alleged wrongdoer. As we explained in *Parratt,* the contrary approach "would almost necessarily result in turning every alleged injury which may have been inflicted by a state official acting under 'color of law' into a violation of the Fourteenth Amendment cognizable under § 1983. . . . Presumably, under this rationale any party who is involved in nothing more than an automobile accident with a state official could allege a constitutional violation under § 1983. Such reasoning 'would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.'" 451 U. S., at 544 (quoting *Paul* v. *Davis,* 424 U. S. 693, 701 (1976)). The *Parratt* principle respects the delicate balance between state and federal courts and comports with the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution. See *Parratt, supra,* at 531–532.

Yet it is fair to say that courts, including our own, have been cautious in invoking the rule of *Parratt.* See *Mann* v. *Tucson,* 782 F. 2d 790, 798 (CA9 1986) (Sneed, J., concurring).

That hesitancy is in part a recognition of the important role federal courts have assumed in elaborating vital constitutional guarantees against arbitrary or oppressive state action. We want to leave an avenue open for recourse where we think the federal power ought to be vindicated. Cf. *Screws* v. *United States*, 325 U. S. 91 (1945).

But the price of our ambivalence over the outer limits of *Parratt* has been its dilution and, in some respects, its transformation into a mere pleading exercise. The *Parratt* rule has been avoided by attaching a substantive rather than procedural label to due process claims (a distinction that if accepted in this context could render *Parratt* a dead letter) and by treating claims based on the Due Process Clause as claims based on some other constitutional provision. See *Taylor* v. *Knapp*, 871 F. 2d 803, 807 (CA9 1989) (Sneed, J., concurring). It has been avoided at the other end of the spectrum by construing complaints alleging a substantive injury as attacks on the adequacy of state procedures. See *Zinermon* v. *Burch*, 494 U. S. 113, 139–151 (1990) (O'CONNOR, J., dissenting); *Easter House* v. *Felder*, 910 F. 2d 1387, 1408 (CA7 1990) (Easterbrook, J., concurring). These evasions are unjustified given the clarity of the *Parratt* rule: In the ordinary case where an injury has been caused not by a state law, policy, or procedure, but by a random and unauthorized act that can be remedied by state law, there is no basis for intervention under § 1983, at least in a suit based on "the Due Process Clause of the Fourteenth Amendment *simpliciter*." 451 U. S., at 536.

As *Parratt*'s precedential force must be acknowledged, I think it disposes of this case. Illinois provides a tort remedy for malicious prosecution; indeed, Albright brought a state-law malicious prosecution claim, albeit after the statute of limitations had expired. (That fact does not affect the adequacy of the remedy under *Parratt*. See *Daniels* v. *Williams*, 474 U. S. 327, 342 (1986) (STEVENS, J., concurring).) Given the state remedy and the holding of *Parratt*, there is neither need nor legitimacy to invoke § 1983 in this case. See 975 F. 2d 343, 347 (CA7 1992) (case below).

III

That said, if a State did not provide a tort remedy for malicious prosecution, there would be force to the argument that the malicious initiation of a baseless criminal prosecution infringes an interest protected by the Due Process Clause and enforceable under § 1983. Compare *Ingraham* v. *Wright,* 430 U. S., at 676, *id.,* at 701–702 (STEVENS, J., dissenting), and *Board of Regents of State Colleges* v. *Roth,* 408 U. S. 564, 573 (1972), with *Paul* v. *Davis, supra,* at 711–712; see *PruneYard Shopping Center* v. *Robins,* 447 U. S. 74, 93–94 (1980) (Marshall, J., concurring); *Martinez* v. *California,* 444 U. S. 277, 281–282 (1980); *Munn* v. *Illinois,* 94 U. S. 113, 134 (1877). But given the state tort remedy, we need not conduct that inquiry in this case.

* * *

For these reasons, I concur in the judgment of the Court holding that the dismissal of petitioner Albright's complaint was proper.

JUSTICE SOUTER, concurring in the judgment.

While I agree with the Court's judgment that petitioner has not justified recognition of a substantive due process violation in his prosecution without probable cause, I reach that result by a route different from that of the plurality. The Court has previously rejected the proposition that the Constitution's application to a general subject (like prosecution) is necessarily exhausted by protection under particular textual guarantees addressing specific events within that subject (like search and seizure), on a theory that one specific constitutional provision can pre-empt a broad field as against another more general one. See *United States* v. *James Daniel Good Real Property, ante,* at 49 ("We have rejected the view that the applicability of one constitutional amendment pre-empts the guarantees of another"); *Soldal* v. *Cook County*, 506 U. S. 56, 70 (1992) ("Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's 'dominant' character. Rather, we examine each constitutional provision in turn"). It has likewise rejected the view that incorporation of the substantive guarantees of the first eight Amendments to the Constitution defines the limits of due process protection, see *Adamson* v. *California*, 332 U. S. 46, 89–92 (1947) (Black, J., dissenting). The second Justice Harlan put it this way:

> "[T]he full scope of the liberty guaranteed by the Due Process Clause . . . is not a series of isolated points . . . . It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . ." *Poe* v. *Ullman*, 367 U. S. 497, 543 (1961) (dissenting opinion).

We are, nonetheless, required by "[t]he doctrine of judicial self-restraint . . . to exercise the utmost care whenever we are asked to break new ground in [the] field" of substantive due process. *Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992). Just as the concept of due process does not protect against insubstantial impositions on liberty, neither should the "rational continuum" be reduced to the mere duplication of protections adequately addressed by other constitutional provisions. Justice Harlan could not infer that the due process guarantee was meant to protect against insubstantial burdens, and we are not free to infer that it was meant to be applied without thereby adding a substantial increment to protection otherwise available. The importance of recognizing the latter limitation is underscored by pragmatic concerns about subjecting government actors to two (potentially inconsistent) standards for the same conduct and needlessly imposing on trial courts the unenviable burden of reconciling well-established jurisprudence under the Fourth and Eighth Amendments with the ill-defined contours of some novel due process right.[1]

This rule of reserving due process for otherwise homeless substantial claims no doubt informs those decisions, see *Graham* v. *Connor,* 490 U. S. 386 (1989), *Gerstein* v. *Pugh,* 420 U. S. 103 (1975), and *Whitley* v. *Albers,* 475 U. S. 312, 327 (1986), in which the Court has resisted relying on the Due Process Clause when doing so would have duplicated protection that a more specific constitutional provision already bestowed.[2] This case calls for just such restraint, in presenting no substantial burden on liberty beyond what the Fourth Amendment is generally thought to redress already.

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[1] JUSTICE STEVENS suggests that these concerns are not for this Court, since Congress resolved them in deciding to provide a remedy for constitutional violations under § 1983. *Post,* at 312. The question before the Court, however, is not about the existence of a statutory remedy for an admitted constitutional violation, but whether a particular violation of substantive due process, as distinct from the Fourth Amendment, should be recognized on the facts pleaded. This question is indisputably within the province of the Court, and should be addressed with regard for the concerns about unnecessary duplication in constitutional adjudication reflected in *Graham* v. *Connor,* 490 U. S. 386 (1989), *Gerstein* v. *Pugh,* 420 U. S. 103 (1975), and *Whitley* v. *Albers,* 475 U. S. 312 (1986). Nothing in Congress's enactment of § 1983 suggests otherwise.

[2] Recognizing these concerns makes sense of what at first blush may seem a tension between our decisions in *Graham* v. *Connor, supra,* and *Gerstein* v. *Pugh, supra,* on the one hand, and *United States* v. *James Daniel Good Real Property, ante,* p. 43, and *Soldal* v. *Cook County,* 506 U. S. 56 (1992), on the other. The Court held in *Graham* that all claims of excessive force by law enforcement officials in the course of a "seizure" should be analyzed under the Fourth Amendment's "reasonableness" standard. "Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Graham* v. *Connor, supra,* at 395. The *Gerstein* Court held that the Fourth Amendment, not the Due Process Clause, determines what post-arrest proceedings are required for suspects detained on criminal charges. *Gerstein* v. *Pugh, supra.* As we recently explained in *United States* v. *James Daniel Good Real Property, ante,* at 50, the Court reasoned in

In framing his claim of infringement of a liberty interest in freedom from the initiation of a baseless prosecution, petitioner has chosen to disclaim any reliance on the Fourth Amendment seizure that followed when he surrendered himself into police custody. Petitioner has failed, however, to allege any substantial injury that is attributable to the former event, but not the latter. His complaint presents an extensive list of damages: limitations on his liberty, freedom of association, and freedom of movement by virtue of the terms of his bond; financial expense of his legal defense; reputational harm among members of the community; inability to transact business or obtain employment in his local area, necessitating relocation to St. Louis; inability to secure credit; and personal pain and suffering. See App. to Pet. for Cert. 49a–50a. None of these injuries, however, is alleged to have followed from the issuance of the formal instrument of prosecution, as distinct from the ensuing assertion of custody. Thus, petitioner has not shown a substantial deprivation of liberty from the mere initiation of prosecution.

The significance of this failure follows from the recognition that none of petitioner's alleged injuries has been treated by the Courts of Appeals as beyond the ambit of compensability

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Gerstein that the Fourth Amendment "balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases." See *Gerstein*, *supra*, at 125, n. 27. Thus, in both *Gerstein* and *Graham*, separate analysis under the Due Process Clause was dispensed with as redundant. The Court has reached the same result in the context of claims of unnecessary and wanton infliction of pain in penal institutions. See *Whitley* v. *Albers*, *supra*, at 327 ("It would indeed be surprising if . . . 'conduct that shocks the conscience' or 'afford[s] brutality the cloak of law,' and so violates the Fourteenth Amendment, *Rochin* v. *California*, 342 U. S. 165, 172, 173 (1952), were not also punishment 'inconsistent with contemporary standards of decency' and 'repugnant to the conscience of mankind,' *Estelle* v. *Gamble*, 429 U. S., at 103, 106, in violation of the Eighth").

under the general rule of 42 U. S. C. § 1983 liability for a seizure unlawful under Fourth Amendment standards, see *Tennessee* v. *Garner,* 471 U. S. 1 (1985) (affirming § 1983 liability based on Fourth Amendment violation); *Brower* v. *County of Inyo,* 489 U. S. 593, 599 (1989) (unreasonable seizure in violation of the Fourth Amendment gives rise to § 1983 liability). On the contrary, the Courts of Appeals have held that injuries like those petitioner alleges are cognizable in § 1983 claims founded upon arrests that are bad under the Fourth Amendment. See, *e. g., Hale* v. *Fish,* 899 F. 2d 390, 403–404 (CA5 1990) (affirming award of damages for mental anguish, harm to reputation, and legal fees for defense); *B. C. R. Transport Co., Inc.* v. *Fontaine,* 727 F. 2d 7, 12 (CA1 1984) (affirming award of damages for destruction of business due to publicity surrounding illegal search); *Sims* v. *Mulcahy,* 902 F. 2d 524, 532–533 (CA7 1990) (approving damages for pain, suffering, and mental anguish in the context of a challenge to jury instructions); *Sevigny* v. *Dicksey,* 846 F. 2d 953, 959 (CA4 1988) (affirming damages for extreme emotional distress); *Dennis* v. *Warren,* 779 F. 2d 245, 248–249 (CA5 1985) (affirming award of damages for pain, suffering, humiliation, and embarrassment); *Konczak* v. *Tyrrell,* 603 F. 2d 13, 17 (CA7 1979) (affirming damages for lost wages, mental distress, humiliation, loss of reputation, and general pain and suffering).

Indeed, it is not surprising that rules of recovery for such harms have naturally coalesced under the Fourth Amendment, since the injuries usually occur only after an arrest or other Fourth Amendment seizure, an event that normally follows promptly (three days in this case) upon the formality of filing an indictment, information, or complaint. There is no restraint on movement until a seizure occurs or bond terms are imposed. Damage to reputation and all of its attendant harms also tend to show up after arrest. The defendant's mental anguish (whether premised on reputational harm, burden of defending, incarceration, or some other consequence of prosecution) customarily will not arise before an arrest, or at least before the notification that an arrest warrant has been issued, informs him of the charges.

There may indeed be exceptional cases where some quantum of harm occurs in the interim period after groundless criminal charges are filed but before any Fourth Amendment seizure. Whether any such unusual case may reveal a substantial deprivation of liberty, and so justify a court in resting compensation on a want of government power or a limitation of it independent of the Fourth Amendment, are issues to be faced only when they arise. They do not arise in this case and I accordingly concur in the judgment of the Court.[3]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

The Fifth Amendment to the Constitution constrains the power of the Federal Government to accuse a citizen of an infamous crime. Under that Amendment, no accusation may issue except on a grand jury determination that there is probable cause to support the accusation.[1] The question presented by this case is whether the Due Process Clause of the Fourteenth Amendment imposes any comparable constraint on state governments.

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[3] JUSTICE STEVENS argues that the fact that "few of petitioner's injuries flowed *solely* from the filing of the charges against him does not make those injuries insubstantial," *post*, at 312 (emphasis in original), and maintains that the arbitrary filing of criminal charges may work substantial harm on liberty. *Ibid.* While I do not quarrel with either proposition, neither of them addresses the threshold question whether the complaint alleges any substantial deprivation beyond the scope of what settled law recognizes at the present time.

[1] "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger . . . ." U. S. Const., Amdt. 5. See also *United States* v. *Calandra*, 414 U. S. 338, 343 (1974).

In *Hurtado* v. *California,* 110 U. S. 516 (1884), we decided that the Due Process Clause does not compel the States to proceed by way of grand jury indictment when they initiate a prosecution. In reaching that conclusion, however, we noted that the substance of the federal guarantee was preserved by California's requirement that a magistrate certify "to the probable guilt of the defendant." *Id.,* at 538. In accord with *Hurtado,* I would hold that Illinois may dispense with the grand jury procedure only if the substance of the probable-cause requirement remains adequately protected.[2]

I

Assuming, as we must, that the allegations of petitioner's complaint are true, it is perfectly clear that the probable-cause requirement was not satisfied in this case. Indeed, it is plain that respondent Oliver, who attested to the criminal information against petitioner, either knew or should have known that he did not have probable cause to initiate criminal proceedings.

Oliver's only evidence against petitioner came from a paid informant who established her *unreliability* on more than 50 occasions, when her false accusations led to aborted and dismissed prosecutions.[3] Nothing about her performance in this case suggested any improvement on her record. The substance she described as cocaine turned out to be baking soda. She twice misidentified her alleged vendor before, in response to a leading question, she agreed that petitioner might be he;[4] in fact, she had never had any contact with petitioner. As the Court of Appeals correctly concluded, the commencement of a serious criminal proceeding on such "scanty grounds" was nothing short of "shocking."[5]

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[2] In *Hurtado,* 110 U. S., at 532, the Court made this comment on the traditions inherited from English law, with particular reference to the Magna Carta:

"Applied in England only as guards against executive usurpation and tyranny, here they have become bulwarks also against arbitrary legislation; but, in that application, as it would be incongruous to measure and restrict them by the ancient customary English law, they must be held to guarantee not particular forms of procedure, but the very substance of individual rights to life, liberty, and property.

". . . Such regulations, to adopt a sentence of Burke's, 'may alter the mode and application but have no power over the substance of original justice.'"

[3] According to the complaint, Oliver, a detective in the Macomb, Illinois, Police Department, agreed to provide Veda Moore with protection and money in exchange for her assistance in acting as a confidential inform-

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ant. Allegedly, Moore, addicted to cocaine, lied to Oliver about her undercover purchases of controlled substances in order to receive the promised payments. During the course of her tenure as an informant, Moore falsely implicated over 50 individuals in criminal activity, resulting each time in a dismissed prosecution.

[4] Relying entirely on information provided by Moore, Oliver testified before a grand jury and secured an indictment against a first suspect, John Albright, Jr., for selling a "look-alike" substance in violation of Illinois law. When he attempted to arrest John Albright, Jr., however, Oliver became convinced that he had the wrong man, and substituted the name of a second suspect, Albright's son, on the arrest warrant. Once again, it became clear that Oliver's suspect could not have committed the crime. Oliver then asked Moore whether her vendor might have been a different son of the man she had first identified. When Moore admitted of that possibility, Oliver attested to the criminal information charging petitioner, his third and final suspect, with a felony.

[5] "Detective Oliver made no effort to corroborate Veda Moore's unsubstantiated accusation. A heap of baking soda was no corroboration. Her initial misidentification of the seller cast grave doubt on the accuracy of her information. And this was part of a pattern: of fifty persons she reported to Oliver as trafficking in drugs, none was successfully prosecuted for any crime. In the case of 'Albright,' Oliver should have suspected that Moore had bought cocaine either from she knew not whom or from someone she was afraid to snitch on (remember that she had gone to work for Oliver in the first place because she was being threatened by a man to whom she owed money for previous purchases of cocaine), that she had consumed it and replaced it with baking soda, and that she had then picked a name from the phone book at random. The fact that she used her informant's reward to buy cocaine makes this hypothesis all the more plausible. An arrest is a serious business. To arrest a person on the scanty grounds that are alleged to be all that Oliver had to go on is shocking." 975 F. 2d 343, 345 (CA7 1992).

These shocking factual allegations give rise to two important questions of law: does the commencement of formal criminal proceedings deprive the accused person of "liberty" as that term is used in the Fourteenth Amendment; and, if so, are the demands of "due process" satisfied solely by compliance with certain procedural formalities which ordinarily ensure that a prosecution will not commence absent probable cause? I shall discuss these questions separately, and then comment on the several opinions supporting the Court's judgment.

II

Punishment by confinement in prison is a frequent conclusion of criminal proceedings. Had petitioner's prosecution resulted in his conviction and incarceration, then there is no question but that the Due Process Clause would have been implicated; a central purpose of the Fourteenth Amendment was to deny States the power to impose this sort of deprivation of liberty until after completion of a fair trial. Over the years, however, our cases have made it clear that the interests protected by the Due Process Clause extend well beyond freedom from an improper criminal conviction.

As a qualitative matter, we have decided that the liberty secured by the Fourteenth Amendment is significantly broader than mere freedom from physical constraint. Although its contours have never been defined precisely, that liberty surely includes the right to make basic decisions about the future; to participate in community affairs; to take advantage of employment opportunities; to cultivate family, business, and social relationships; and to travel from place to place.[6] On a quantitative level, we have, to be sure, ac-

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[6] As we stated in *Meyer* v. *Nebraska,* 262 U. S. 390 (1923):

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, knowledged that not every modest impairment of individual liberty amounts to a deprivation raising constitutional concerns. Cf. *Meachum* v. *Fano*, 427 U. S. 215 (1976). At the same time, however, we have recognized that a variety of state actions have such serious effects on protected liberty interests that they may not be undertaken arbitrarily,[7] or without observing procedural safeguards.[8]

In my opinion, the formal commencement of a criminal proceeding is quintessentially this type of state action. The initiation of a criminal prosecution, regardless of whether it

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to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Id.*, at 399 (citations omitted).

[7] See, *e. g., Turner* v. *Safley*, 482 U. S. 78, 94–99 (1987) (invalidating prison regulation of inmate marriages); *Moore* v. *East Cleveland*, 431 U. S. 494, 500 (1977) (striking down ordinance that prohibited certain relatives from residing together because it had only a "tenuous relation" to its goals); *Wieman* v. *Updegraff*, 344 U. S. 183, 191 (1952) (requiring loyalty oaths of public employees violates due process because "[i]ndiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power"); *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925) (state law requiring parents to send children to public school violates due process because "rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State").

[8] See, *e. g., Cleveland Bd. of Ed.* v. *Loudermill*, 470 U. S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case'") (quoting *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950)); *Goss* v. *Lopez*, 419 U. S. 565, 581 (1975) ("[D]ue process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story"); *Wisconsin* v. *Constantineau*, 400 U. S. 433, 436–437 (1971) ("Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential").

prompts an arrest, immediately produces "a wrenching disruption of everyday life." *Young* v. *United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787, 814 (1987). Every prosecution, like every arrest, "is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends." *United States* v. *Marion,* 404 U. S. 307, 320 (1971). In short, an official accusation of serious crime has a direct impact on a range of identified liberty interests. That impact, moreover, is of sufficient magnitude to qualify as a deprivation of liberty meriting constitutional protection.[9]

III

The next question, of course, is what measure of "due process" must be provided an accused in connection with this deprivation of liberty. In *In re Winship,* 397 U. S. 358, 361–364 (1970), we relied on both history and certain societal interests to find that, in the context of criminal conviction, due process entails proof of guilt beyond a reasonable doubt. The same considerations support a requirement that criminal prosecution be predicated, at a minimum, on a finding of probable cause.

It has been the historical practice in our jurisprudence to withhold the filing of criminal charges until the state can marshal evidence establishing probable cause that an identifiable defendant has committed a crime. This long tradition is reflected in the common-law tort of malicious prosecution,[10] as well as in our cases.[11] In addition, the probable-cause requirement serves valuable societal interests, protecting the populace from the whim and caprice of governmental agents without unduly burdening the government's prosecutorial function.[12] Consistent with our reasoning in *Winship*, these factors lead to the conclusion that one element of the "due process" prescribed by the Fourteenth Amendment is a responsible decision that there is probable cause to prosecute.[13]

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[9] The Court of Appeals was persuaded that the Court's reasoning in *Paul* v. *Davis,* 424 U. S. 693 (1976), required a different conclusion. 975 F. 2d, at 345. Even if one accepts the dubious proposition that an individual's interest in his or her reputation *simpliciter* is not an interest in liberty, *Paul* v. *Davis* recognized that liberty is infringed by governmental conduct that injures reputation in conjunction with other interests. 424 U. S., at 701. The commencement of a criminal prosecution is certainly such conduct.

Illinois has established procedures intended to ensure that evidence of "the probable guilt of the defendant," see *Hur-*

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[10] See, *e. g.*, W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 119, pp. 876–882 (5th ed. 1984).

[11] *Wayte* v. *United States*, 470 U. S. 598, 607 (1985); *Bordenkircher* v. *Hayes*, 434 U. S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion"); *Gerstein* v. *Pugh*, 420 U. S. 103, 119 (1975) ("The standard of proof required of the prosecution is usually referred to as 'probable cause,' but in some jurisdictions it may approach a prima facie case of guilt"); see also *United States* v. *Lovasco*, 431 U. S. 783, 791 (1977) (noting that "it is unprofessional conduct for a prosecutor to recommend an indictment on less than probable cause") (footnote omitted); *United States* v. *Calandra*, 414 U. S., at 343 (noting that one of the "grand jury's historic functions" was to determine whether probable cause existed); *Dinsman* v. *Wilkes*, 12 How. 390, 402 (1852) (noting that instigation of a criminal prosecution without probable cause creates an action for malicious prosecution).

[12] Because probable cause is already required for an arrest, and proof beyond a reasonable doubt for a conviction, the burden on law enforcement is not appreciably enhanced by a requirement of probable cause for prosecution.

[13] I thus disagree with dicta to the contrary in a footnote in *Gerstein* v. *Pugh*, 420 U. S., at 125, n. 26 ("Because the probable cause determination is not a constitutional prerequisite to the charging decision, it is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial"). As I have explained, the commencement of criminal proceedings itself infringes on liberty interests, regardless of the restraints imposed.

tado, 110 U. S., at 538, has been assembled before a criminal prosecution is pursued.[14] Petitioner does not challenge the general adequacy of these procedures. Rather, he claims that the probable-cause determination in his case was invalid as a substantive matter, because it was wholly unsupported by reliable evidence and tainted by Oliver's disregard or suppression of facts bearing on the reliability of his informant. This contention requires us to consider whether a state's compliance with facially valid procedures for initiating a prosecution is by itself sufficient to meet the demands of due process, without regard to the substance of the resulting probable-cause determination.

Fortunately, our prior cases have rejected such a formalistic approach to the Due Process Clause. In *Mooney* v. *Holohan,* 294 U. S. 103, 110 (1935), a criminal defendant claimed that the prosecutor's knowing use of perjured testimony, and deliberate suppression of evidence that would have impeached that testimony, constituted a denial of due process. The State urged us to reject this submission on the ground that the petitioner's trial had been free of procedural error. Our treatment of the State's argument should dispose of the analogous defense advanced today:

> "Without attempting at this time to deal with the question at length, we deem it sufficient for the present purpose to say that we are unable to approve this narrow view of the requirement of due process. That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie

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[14] At the time of this suit, Illinois law allowed the filing of felony charges only by information or indictment. Ill. Rev. Stat., Ch. 38, § 111-2(a) (1987). If the filing were by information, as was the case here, then the charges could be filed but not pursued until a preliminary hearing had been held or waived pursuant to Ch. 38, § 109-3, and, if held, had concluded in a finding of probable cause to believe that the defendant had committed an offense. Ch. 38, §§ 111-2(a), 109-3.

> at the base of our civil and political institutions. *Hebert* v. *Louisiana*, 272 U. S. 312, 316, 317 [(1926)]. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." *Id.*, at 112.

In the years since *Mooney*, we have consistently reaffirmed this understanding of the requirements of due process. Our cases make clear that procedural regularity notwithstanding, the Due Process Clause is violated by the knowing use of perjured testimony or the deliberate suppression of evidence favorable to the accused.[15] It is, in other words, well established that adherence to procedural forms will not save a conviction that rests in substance on false evidence or deliberate deception.

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[15] See, *e. g., United States* v. *Agurs*, 427 U. S. 97, 103, and n. 8 (1976) (citing cases); *Giglio* v. *United States*, 405 U. S. 150, 153–154 (1972) (failure to disclose Government agreement with witness violates due process); *Brady* v. *Maryland*, 373 U. S. 83, 87 (1963) ("[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution"); *Napue* v. *Illinois*, 360 U. S. 264 (1959) (failure of State to correct testimony known to be false violates due process); *Pyle* v. *Kansas*, 317 U. S. 213, 215–216 (1942) (allegations of the knowing use of perjured testimony and the suppression of evidence favorable to the accused "sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody"). But cf. *United States* v. *Williams*, 504 U. S. 36 (1992) (prosecutor need not present exculpatory evidence in his possession to the grand jury).

Just as perjured testimony may invalidate an otherwise proper conviction, so also may the absence of proof render a criminal conviction unconstitutional. The traditional assumption that "proof of a criminal charge beyond a reasonable doubt is constitutionally required," *Winship,* 397 U. S., at 362, has been endorsed explicitly and tied directly to the Due Process Clause. *Id.*, at 364.[16] When the quantum of proof supporting a conviction falls sufficiently far below this standard, then the Due Process Clause requires that the conviction be set aside, even in the absence of any procedural error. *Jackson* v. *Virginia,* 443 U. S. 307 (1979).

In short, we have already recognized that certain substantive defects can vitiate the protection ordinarily afforded by a trial, so that formal compliance with procedural rules is no longer enough to satisfy the demands of due process. The same is true of a facially valid determination of probable cause. Even if prescribed procedures are followed meticulously, a criminal prosecution based on perjured testimony, or evidence on which "no rational trier of fact" could base a finding of probable cause, cf. *id.*, at 324, simply does not comport with the requirements of the Due Process Clause.

IV

I do not understand the plurality to take issue with the proposition that commencement of a criminal case deprives the accused of liberty, or that the state has a duty to make a probable-cause determination before filing charges. Instead, both THE CHIEF JUSTICE and JUSTICE SCALIA identify petitioner's reliance on a "substantive due process" theory as the critical flaw in his argument. Because there is no substantive due process right available to petitioner, they conclude, his due process claim can be rejected in its entirety and without further consideration.

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[16] "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship,* 397 U. S., at 364.

In my opinion, this approach places undue weight on the label petitioner has attached to his claim.[17] The Fourteenth Amendment contains only one Due Process Clause. Though it is sometimes helpful, as a matter of doctrine, to distinguish between substantive and procedural due process, see *Daniels* v. *Williams,* 474 U. S. 327, 337–340 (1986) (STEVENS, J., concurring in judgments), the two concepts are not mutually exclusive, and their protections often overlap.

Indeed, the Fourth Amendment, upon which the plurality principally relies, provides both procedural and substantive protections, and these protections converge. When the Court first held that the right to be free from unreasonable official searches was "implicit in 'the concept of ordered liberty,'" and therefore protected by the Due Process Clause of the Fourteenth Amendment, *Wolf* v. *Colorado,* 338 U. S. 25, 27–28 (1949), it refused to require the States to provide the procedures accorded in federal trials to protect that right.[18] *Id.,* at 28–33. Significantly, however, when we overruled the procedural component of that decision in *Mapp* v. *Ohio,* 367 U. S. 643 (1961), we made it clear that we were "extending the *substantive* protections of due process to all constitutionally unreasonable searches—state or federal . . . ." *Id.,* at 655 (emphasis added).

Moreover, in *Winship,* we found it unnecessary to clarify whether our holding rested on substantive or procedural due process grounds; it was enough to say that the "Due

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[17] In any event, it should be noted that in presenting his question for review, petitioner invokes the Due Process Clause generally, without reference to "substantive" due process. See Pet. for Cert. i.

[18] Our refusal in *Wolf* to require States to adopt a federal rule of procedure—the exclusionary rule—paralleled our earlier refusal in *Hurtado* to require States to adopt a federal rule of procedure—the grand jury process for ascertaining probable cause. Nevertheless, both cases recognized that the Fourteenth Amendment protected the substantive rights as implicit in the concept of ordered liberty.

Process Clause" itself requires proof beyond a reasonable doubt. 397 U. S., at 364. Similarly, whether the analogous probable-cause standard urged by petitioner is more appropriately characterized as substantive or procedural is not a matter of overriding significance. In either event, the same Due Process Clause operates to protect the individual against the abuse of governmental power, by guaranteeing that no criminal prosecution shall be initiated except on a finding of probable cause.

V

According to the plurality, the application of certain portions of the Bill of Rights to the States through the Fourteenth Amendment "has substituted, in these areas of criminal procedure, the specific guarantees of the various provisions of the Bill of Rights . . . for the more generalized language contained in the earlier cases construing the Fourteenth Amendment." *Ante,* at 273. The plurality then reasons, in purported reliance on *Graham* v. *Connor,* 490 U. S. 386 (1989), that because the Fourth Amendment is designed to address pretrial deprivations of liberty, petitioner's claim must be analyzed under that Amendment alone. *Ante,* at 273–274. In the end, however, THE CHIEF JUSTICE concludes that he need not consider petitioner's claim under the Fourth Amendment after all, because that question was not presented in the petition for certiorari. *Ante,* at 275.

There are two glaring flaws in the plurality's analysis. First, the pretrial deprivation of liberty at issue in this case is addressed by a particular Amendment, but not the Fourth; rather, it is addressed by the Grand Jury Clause of the Fifth Amendment. That the Framers saw fit to provide a specific procedural guarantee against arbitrary accusations indicates the importance they attached to the liberty interest at stake. Though we have not required the States to use the grand jury procedure itself, it by no means follows that the underlying liberty interest is unworthy of Fourteenth Amendment protection. As we explained in *Hurtado*, "bulwarks" of protection such as the Magna Carta and the Due Process Clause "guarantee not particular forms of procedure, but the very substance of individual rights to life, liberty, and property."[19]

Second, and of greater importance, the cramped view of the Fourteenth Amendment taken by the plurality has been rejected time and time again by this Court. In his famous dissenting opinion in *Adamson* v. *California*, 332 U. S. 46, 89–92 (1947), Justice Black took the position that the Due Process Clause of the Fourteenth Amendment makes the entire Bill of Rights applicable to the States. As a corollary, he advanced a theory not unlike that endorsed today by THE CHIEF JUSTICE and JUSTICE SCALIA: that the express guarantees of the Bill of Rights mark the outer limit of Due Process Clause protection. *Ibid.* What is critical, for present purposes, is that the *Adamson* majority rejected this contention and held instead that the "ordered liberty" protected by the Due Process Clause is not coextensive with the specific provisions of the first eight Amendments to the Constitution. Justice Frankfurter's concurrence made this point perfectly clear:

> "It may not be amiss to restate the pervasive function of the Fourteenth Amendment in exacting from the States observance of basic liberties. . . . The Amendment neither comprehends the specific provisions by which the founders deemed it appropriate to restrict the federal government nor is it confined to them. The Due Process Clause of the Fourteenth Amendment has an independent potency . . . ." *Id.*, at 66.

In the years since *Adamson*, the Court has shown no inclination to reconsider its repudiation of Justice Black's position.[20] Instead, the Court has identified numerous violations of due process that have no counterparts in the specific guarantees of the Bill of Rights. And contrary to the suggestion of the plurality, *ante*, at 271–272, 273, these decisions have not been limited to the realm outside criminal law. As I have already discussed, it is the Due Process Clause itself, and not some explicit provision of the Bill of Rights, that forbids the use of perjured testimony and the suppression of evidence favorable to the accused.[21] Similarly, we have held that the Due Process Clause requires an impartial judge,[22] and prohibits the use of unnecessarily suggestive identification procedures.[23] Characteristically, Justice Black was the sole dissenter when the Court concluded in *Sheppard* v. *Maxwell*, 384 U. S. 333 (1966), that the failure to control disruptive influences in the courtroom constitutes a denial of due process.

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[19] *Hurtado* v. *California*, 110 U. S. 516, 532 (1884). See n. 2, *supra*.

Perhaps most important, and virtually ignored by the plurality today, is our holding in *In re Winship* that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt." 397 U. S., at 364. Because the reasonable-doubt standard has no explicit textual source in the Bill of Rights, the *Winship* Court was faced with precisely the same argument now advanced by THE CHIEF JUSTICE and JUSTICE SCALIA: Noting the procedural guarantees for which the Bill of Rights specifically provides in criminal cases, Justice Black maintained that "[t]he Constitution thus goes into some detail to spell out what kind of trial a defendant charged with crime should have, and I believe the Court has no power to add to or subtract from the procedures set forth by the Founders." *Id.*, at 377 (dissenting opinion). Holding otherwise, the *Winship* majority resoundingly rejected this position, which Justice Harlan characterized as "fl[ying] in the face of a course of judicial history reflected in an unbroken line of opinions that have interpreted due process to impose restraints on the procedures government may adopt in its dealing with its citizens . . . ." *Id.*, at 373, n. 5 (concurring opinion).

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[20] Indeed, no other Justice has joined Justice Black in maintaining that the scope of the Due Process Clause is limited to the specific guarantees of the Bill of Rights. Although Justice Douglas joined Justice Black in dissent in *Adamson*, he later retreated from this position. See, *e. g.*, *Griswold* v. *Connecticut*, 381 U. S. 479, 484 (1965); L. Tribe, American Constitutional Law § 11–2, p. 774, and n. 32 (2d ed. 1988).

[21] See n. 15, *supra*.

[22] *Tumey* v. *Ohio*, 273 U. S. 510 (1927).

[23] *Stovall* v. *Denno*, 388 U. S. 293, 302 (1967). Justice Black dissented. *Id.*, at 303–306.

Nevertheless, THE CHIEF JUSTICE and JUSTICE SCALIA seem intent on resuscitating a theory that has never been viable, by reading our opinion in *Graham* v. *Connor* more broadly than our actual holding. In *Graham*, which involved a claim of excessive force in the context of an arrest or investigatory stop, we held that "[b]ecause the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." 490 U. S., at 395. Under *Graham*, then, the existence of a specific protection in the Bill of Rights that is incorporated by the Due Process Clause may preclude what would in any event be redundant reliance on a more general conception of liberty.[24] Nothing in *Graham*, however, forecloses a general due process claim when a more specific source of protection is absent or, as here, open to question. See *ante*, at 275 (reserving question whether Fourth Amendment protects against filing of charges without probable cause).

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[24] Moreover, it likely made no difference to the outcome in *Graham* that the Court rested its decision on the Fourth Amendment rather than the Due Process Clause. The text of the Fourth Amendment's prohibition against "unreasonable" seizures is no more specific than the Due Process Clause's prohibition against deprivations of liberty without "due process." Under either provision, the appropriate standards for evaluating excessive force claims must be developed through the same common-law process of case-by-case adjudication.

At bottom, the plurality opinion seems to rest on one fundamental misunderstanding: that the incorporation cases have somehow "substituted" the specific provisions of the Bill of Rights for the "more generalized language contained in the earlier cases construing the Fourteenth Amendment." *Ante,* at 273. In fact, the incorporation cases themselves rely on the very "generalized language" THE CHIEF JUSTICE would have them displacing.[25] Those cases add to the liberty protected by the Due Process Clause most of the specific guarantees of the first eight Amendments, but they do not purport to take anything away; that a liberty interest is not the subject of an incorporated provision of the Bill of Rights does not remove it from the ambit of the Due Process Clause. I cannot improve on Justice Harlan's statement of this settled proposition:

> "[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreason-

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[25] See, *e. g., Mapp* v. *Ohio,* 367 U. S. 643, 655 (1961) (applying the exclusionary rule to the States because "without that rule the freedom from state invasions of privacy would be so ephemeral . . . as not to merit this Court's high regard as a freedom 'implicit in the concept of ordered liberty'"); *Benton* v. *Maryland,* 395 U. S. 784, 794 (1969) (holding that "the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment"); *Duncan* v. *Louisiana,* 391 U. S. 145, 149 (1968) ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee").

> able searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment." *Poe* v. *Ullman*, 367 U. S. 497, 543 (1961) (dissenting opinion).

I have no doubt that an official accusation of an infamous crime constitutes a deprivation of liberty worthy of constitutional protection. The Framers of the Bill of Rights so concluded, and there is no reason to believe that the sponsors of the Fourteenth Amendment held a different view. The Due Process Clause of that Amendment should therefore be construed to require a responsible determination of probable cause before such a deprivation is effected.

VI

A separate comment on JUSTICE GINSBURG's opinion is appropriate. I agree with her explanation of why the initial seizure of petitioner continued until his discharge and why the seizure was constitutionally unreasonable. Had it been conducted by a federal officer, it would have violated the Fourth Amendment. And, because unreasonable official seizures by state officers are deprivations of liberty or property without due process of law, the seizure of petitioner violated the Fourteenth Amendment. Accordingly, JUSTICE GINSBURG is correct in concluding that the complaint sufficiently alleges a cause of action under 42 U. S. C. §1983.

Having concluded that the complaint states a cause of action, however, her opinion does not adequately explain why a dismissal of that complaint should be affirmed. Her submission, as I understand it, rests on the propositions that (1) petitioner abandoned a meritorious claim based on the component of the Due Process Clause of the Fourteenth Amendment that is coterminous with the Fourth Amendment; and (2) the Due Process Clause provides no protection for deprivations of liberty associated with the initiation of a criminal prosecution unless an unreasonable seizure occurs. For reasons already stated, I firmly disagree with the second proposition.

In the Bill of Rights, the Framers provided constitutional protection against unfounded felony accusations in the Grand Jury Clause of the Fifth Amendment and separate protection against unwarranted arrests in the Fourth Amendment. Quite obviously, they did not regard the latter protection as sufficient to avoid the harm associated with an irresponsible official accusation of serious criminal conduct. Therefore, although in most cases an arrest or summons to appear in court may promptly follow the initiation of criminal proceedings, the accusation itself causes a harm that is analytically, and often temporally, distinct from the arrest. In this very case, the petitioner suffered a significant injury *before* he voluntarily surrendered.[26] In other cases a significant

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[26] The petitioner was deprived of a constitutionally protected liberty interest at the moment that he was formally charged with a crime—an event that occurred *prior* to his seizure, and *several months prior* to the preliminary hearing. I agree with JUSTICE GINSBURG that the officer's incomplete testimony at the preliminary hearing perpetuated the violation of petitioner's right to be free from unreasonable seizure, *ante*, at 279, but it also perpetuated the violation of his right to be free from prosecution absent probable cause. As such, contrary to her suggestion, *ante*, at 277, n. 1, either constitutional violation—the prosecution absent probable cause or the unreasonable seizure—can independently support an action under 42 U. S. C. § 1983.

Furthermore, although JUSTICE GINSBURG speculates that respondent may be fully protected from damages liability by an immunity defense, *ante*, at 279, and n. 5, that issue is neither free of difficulty, cf. *Buckley* v. *Fitzsimmons*, 509 U. S. 259 (1993), nor properly before us. See plurality opinion, *ante*, at 269, n. 3. The question on which we granted certiorari is whether the initiation of criminal charges absent probable cause is a deprivation of liberty protected by the Due Process Clause. Neither the fact that the seizure caused by petitioner's arrest also deprived him of liberty, nor the possible availability of an affirmative defense, is a sufficient reason for failing to discuss or decide this question. The question interval may separate the formal accusation from the arrest, possibly because the accused is out of the jurisdiction or because of administrative delays in effecting the arrest.[27]

Because the constitutional protection against unfounded accusations is distinct from, and somewhat broader than, the protection against unreasonable seizures, there is no reason why an abandonment of a claim based on the seizure should constitute a waiver of the claim based on the accusation. Moreover, a case holding that allegations of police misconduct in connection with an arrest or seizure are adequately reviewed under the Fourth Amendment's reasonableness standard, *Graham* v. *Connor,* 490 U. S. 386 (1989), tells us nothing about how unwarranted accusations should be evaluated.

Graham merely held that the due process right to be free from police applications of excessive force when state officers effect a seizure is governed by the same reasonableness standard as that governing seizures effected by federal officers. *Id.,* at 394–395. In the unlawful seizure context exemplified by *Graham,* there is no need to differentiate between a so-called Fourth Amendment theory and a substantive due process theory because they are coextensive.[28] Whether viewed through a Fourth Amendment lens or a sub-

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whether one is protected by the Due Process Clause from unfounded prosecutions has implications beyond whether damages are ultimately obtainable. Indeed, in this very case petitioner's complaint sought injunctive relief in addition to damages.

[27] See, *e. g., Doggett* v. *United States,* 505 U. S. 647 (1992) (time lag between indictment and arrest of 8½ years due in part to the defendant's absence from the country and in part to the Government's negligence).

[28] It is worthwhile to emphasize that the Fourth Amendment itself does not apply to state actors. It is only because the Court has held that the privacy rights protected against federal invasion by that Amendment are implicit in the concept of ordered liberty protected by the Due Process Clause of the Fourteenth Amendment that the Fourth Amendment has any relevance in this case. Strictly speaking, petitioner's claim is based entirely and exclusively on the Fourteenth Amendment's Due Process Clause.

stantive due process lens, the substantive right protected is the same.

When, however, the scope of the Fourth Amendment protection does not fully encompass the liberty interest at stake—as in this case—it is both unwise and unfair to place a blinder on the lens that focuses on the specific right being asserted. Although history teaches us that the Fourth and Fifth Amendments have been viewed "as running 'almost into each other,'" *Mapp* v. *Ohio,* 367 U. S., at 646, quoting *Boyd* v. *United States,* 116 U. S. 616, 630 (1886), and citing *Entick* v. *Carrington,* 19 How. St. Tr. 1029 (C. P. 1765), we have never previously thought that the area of overlapping protection should constrain the independent protection provided by either.

VII

Although JUSTICE SOUTER leaves open the possibility that in some future case, a due process claim could be stated for a prosecution absent probable cause, he concludes that this is not such a case. He is persuaded that the federal remedy for Fourth Amendment violations provides an adequate justification for refusing to "'break new ground'" by recognizing the "novel due process right" asserted by petitioner. *Ante,* at 287, 288. Like THE CHIEF JUSTICE, *ante,* at 271, 275, and JUSTICE GINSBURG, *ante,* at 281, he points to *Collins* v. *Harker Heights,* 503 U. S. 115 (1992), as a pertinent example of our reluctance "to expand the concept of substantive due process . . . in [an] unchartered area." *Id.,* at 125. Our relevant holding in that case was that a city's failure to provide an employee with a reasonably safe place to work did not violate the Federal Constitution. We unanimously characterized the petitioner's constitutional claim as "unprecedented." *Id.,* at 127. The contrast between *Collins* and this case could not be more stark.

The lineage of the constitutional right asserted in this case dates back to the Magna Carta. See n. 2, *supra.* In an early Massachusetts case, Chief Justice Shaw described it as follows:

> "The right of individual citizens to be secure from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial, before a probable cause is established by the presentment and indictment of a grand jury, in case of high offences, is justly regarded as one of the securities to the innocent against hasty, malicious and oppressive public prosecutions, and as one of the ancient immunities and privileges of English liberty." *Jones* v. *Robbins*, 74 Mass. 329, 344 (1857).

Moreover, most of the Courts of Appeals have treated claims of prosecutions without probable cause as within "the ambit of compensability under the general rule of 42 U. S. C. § 1983 liability," see *ante*, at 289–290 (SOUTER, J., concurring in judgment). See, *e. g.*, *Golino* v. *New Haven*, 950 F. 2d 864, 866–867 (CA2 1991) (and case cited therein), cert. denied, 505 U. S. 1221 (1992); *Robinson* v. *Maruffi*, 895 F. 2d 649, 654–657 (CA10 1990) (citing cases); *Torres* v. *Superintendent of Police of Puerto Rico*, 893 F. 2d 404, 408 (CA1 1990) (citing cases, and finding cause of action if "egregious"); *Goodwin* v. *Metts*, 885 F. 2d 157, 162 (CA4 1989) (citing cases), cert. denied, 494 U. S. 1081 (1990); *Rose* v. *Bartle*, 871 F. 2d 331, 348–349 (CA3 1989) (citing cases); *Strength* v. *Hubert*, 854 F. 2d 421 (CA11 1988); *Wheeler* v. *Cosden Oil & Chemical Co.*, 734 F. 2d 254 (CA5 1984).

Given the abundance of precedent in the Courts of Appeals, the vintage of the liberty interest at stake, and the fact that the Fifth Amendment categorically forbids the Federal Government from initiating a felony prosecution without presentment to a grand jury, it is quite wrong to characterize petitioner's claim as an invitation to enter unchartered territory. On the contrary, the claim is manifestly of constitutional dimension.

This conclusion should end our inquiry. Whether the Due Process Clause in any given case may provide a "duplication of protections," *ante*, at 287 (SOUTER, J., concurring in judgment) is irrelevant to whether a liberty interest is at stake.[29] Even assuming the dubious proposition that, in this case, due process protection against a baseless prosecution may not provide "a substantial increment to protection otherwise available," *ibid.*,[30] that is a consideration relevant only to damages, not to the existence of constitutional protection. Furthermore, that few of petitioner's injuries flowed *solely* from the filing of the charges against him does not make those injuries insubstantial. To the contrary, I can think of few powers that the State possesses which, if arbitrarily imposed, can harm liberty as substantially as the filing of criminal charges.

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[29] JUSTICE SOUTER relies in part upon "pragmatic concerns about subjecting government actors to two (potentially inconsistent) standards for the same conduct." *Ante*, at 287. I see no basis for that concern in this case. Moreover, Congress properly weighs "pragmatic concerns" when it decides whether to provide a remedy for a violation of federal law. Such concerns motivated the enactment of § 1983—a statute that provides a remedy for constitutional violations. Thus, if such a violation is alleged—and I am satisfied that one is here—we have a duty to enforce the statute without examining pragmatic concerns.

[30] It seems to me quite wrong to attribute to a subsequent arrest the reputational and other harms caused by an unjustified accusation. In addition, although JUSTICE GINSBURG is prepared to hold that a Fourth Amendment claim does not accrue until the baseless charges are dismissed, at least some of the Courts of Appeals have held that the arrest triggers the running of the statute of limitations. See, *e. g., Rose* v. *Bartle*, 871 F. 2d 331, 351 (CA3 1989); *McCune* v. *Grand Rapids*, 842 F. 2d 903, 906 (CA6 1988); *Mack* v. *Varelas*, 835 F. 2d 995, 1000 (CA2 1987); *Venegas* v. *Wagner*, 704 F. 2d 1144, 1146 (CA9 1983). And, given the disposition of this case, a majority of this Court might agree. In any event, uncertainties about such matters counsel against constitutional adjudication based upon "pragmatic concerns."

VIII

While the supposed adequacy of an alternative federal remedy persuades JUSTICES GINSBURG and SOUTER that petitioner's claim fails, the availability of an alternative state remedy convinces JUSTICE KENNEDY. I must therefore explain why I do not agree with his reliance on *Parratt* v. *Taylor,* 451 U. S. 527 (1981). In 1975, I helped plant the seed that ultimately flowered into the *Parratt* doctrine. See *Bonner* v. *Coughlin,* 517 F. 2d 1311, 1318–1319 (CA7 1975), modified en banc, 545 F. 2d 565 (1976), cert. denied, 435 U. S. 932 (1978) (cited in *Parratt* v. *Taylor,* 451 U. S., at 541–542). The plaintiff in *Bonner,* like the plaintiff in *Parratt,* claimed that the negligence of state agents had deprived him of a property interest "without due process of law." In both cases, the claim was rejected because a predeprivation remedy was infeasible and the State's postdeprivation remedy was considered adequate to prevent a constitutional violation. *Parratt* v. *Taylor,* 451 U. S., at 543–544; *Bonner* v. *Coughlin,* 517 F. 2d, at 1319–1320. Both of those cases involved the type of ordinary common-law tort that can be committed by anyone. Such torts are not deprivations "without due process" simply because the tortfeasor is a public official.

The rationale of those cases is inapplicable to this case whether one views the claim at issue as substantive or procedural.[31] If one views the petitioner's claim as one of substantive due process, *Parratt* is categorically inapplicable. *Zinermon* v. *Burch,* 494 U. S. 113, 125 (1990). Conversely, if one views his claim as one of procedural due process, *Parratt* is also inapplicable, because its rationale does not apply to officially authorized deprivations of liberty or property.

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[31] See 1 S. Nahmod, Civil Rights and Civil Liberties Litigation: The Law of Section 1983, § 3.15, pp. 211–212 (3d ed. 1991).

Thus, contrary to JUSTICE KENNEDY's conclusion, *ante,* at 285, *Parratt*'s "precedential force" does not dispose of this case. Petitioner was subjected to criminal charges by an affirmative, deliberate act of a state official.[32] The filing of criminal charges is effectuated through established state procedures under which government agents, such as respondent Oliver, are authorized to act.[33] In addition, the State's authorized agent knows precisely when the deprivation of the liberty interest to be free from criminal prosecution will occur—the moment that the charges are filed.[34] Therefore, as with arrest or imprisonment, the State is capable of providing a reasoned predeprivation determination, at least *ex parte,* prior to the commencement of criminal proceedings.[35] See *Zinermon* v. *Burch,* 494 U. S., at 136–139. Failure to do so, or to do so in a meaningful way, see *supra,* at 298–300, is constitutionally unacceptable.[36] Thus, notwithstanding the possible availability of a state tort action for malicious prosecution, § 1983 provides a federal remedy for the constitutional violation alleged by petitioner. *Monroe* v. *Pape,* 365 U. S. 167, 183 (1961) ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked") (overruled in part not relevant here, *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 664–689 (1978)).

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[32] This case is thus distinguishable from *Hudson* v. *Palmer,* 468 U. S. 517 (1984), in which petitioner alleged that a prison guard intentionally destroyed his property. *Id.,* at 533 (holding that the Due Process Clause is not violated by random and unauthorized intentional deprivations of property "until and unless it provides or refuses to provide a suitable postdeprivation remedy").

[33] See n. 14, *supra.*

[34] The *Parratt* doctrine is also inapplicable here because it does not apply to cases in which the constitutional deprivation is complete when the tort occurs. *Zinermon* v. *Burch,* 494 U. S. 113, 125 (1990) (citing *Daniels* v. *Williams,* 474 U. S. 327, 338 (1986) (STEVENS, J., concurring in judgments)); see *supra,* at 313.

[35] See, *e. g., Gerstein* v. *Pugh,* 420 U. S., at 114 (holding that the Fourth Amendment, as applied to the States through the Due Process Clause of the Fourteenth Amendment, "requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest").

[36] See, *e. g., Logan* v. *Zimmerman Brush Co.,* 455 U. S. 422, 435–437 (1982).

The remedy for a violation of the Fourteenth Amendment's Due Process Clause provided by § 1983 is not limited, as JUSTICE KENNEDY posits, *ante*, at 285, to cases in which the injury has been caused by "a state law, policy, or procedure." One of the primary purposes of § 1983 was to provide a remedy "against those who representing a State in some capacity were *unable* or *unwilling* to enforce a state law." *Monroe* v. *Pape*, 365 U. S., at 175–176 (emphasis in original). Therefore, despite his suggestion to the contrary, *ante*, at 285, JUSTICE KENNEDY's interpretation of *Parratt* is in direct conflict with both the language and the purposes of § 1983. See *Monroe* v. *Pape*, 365 U. S., at 172–187.

Section 1983 provides a federal cause of action against "[e]very person" who under color of state authority causes the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U. S. C. § 1983. The *Parratt* doctrine is reconcilable with § 1983 only when its application is limited to situations in which no constitutional violation occurs. In the context of certain deprivations of property, due process is afforded—and therefore the Constitution is not violated—if an adequate postdeprivation state remedy is available in practice to provide either the property's prompt return or an equivalent compensation. See *Bonner* v. *Coughlin*, 517 F. 2d, at 1320. In other contexts, however, including criminal cases and most cases involving a deprivation of liberty, the deprivation is complete, and the Due Process Clause has been violated, when the loss of liberty occurs.[37] In those contexts, any postdeprivation state procedure is merely a remedy; because it does not provide the predeprivation process that is "due," it does not avoid the constitutional violation. In such cases, like this one, § 1983 provides a federal remedy regardless of the adequacy of the state remedy. *Monroe* v. *Pape*, 365 U. S., at 183.

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[37] Postdeprivation procedures may provide adequate due process for deprivations of liberty in limited circumstances. See, *e. g.*, *Zinermon* v. *Burch*, 494 U. S., at 132 ("[I]n situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake . . . or

IX

The Court's judgment of affirmance is supported by five different opinions. Significantly, none of them endorses the reasoning of the Court of Appeals, and none of them commands a majority. Of greatest importance, in the aggregate those opinions do not reject my principal submission: the Due Process Clause of the Fourteenth Amendment constrains the power of state governments to accuse a citizen of an infamous crime.

I respectfully dissent.

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where the State is truly unable to anticipate and prevent a random deprivation of a liberty interest, postdeprivation remedies might satisfy due process"); *Daniels* v. *Williams*, 474 U. S., at 342 (STEVENS, J., concurring in judgments) (noting that *Parratt* could defeat a procedural due process claim that alleged a deprivation of liberty when "a predeprivation hearing was definitionally impossible"); *Ingraham* v. *Wright*, 430 U. S. 651, 701 (1977) (STEVENS, J., dissenting) (disagreeing with the Court's holding that the State's postdeprivation remedies for corporal punishment in the schools satisfied the Due Process Clause, but noting that "a postdeprivation remedy is sometimes constitutionally sufficient").

ABF FREIGHT SYSTEM, INC. *v.* NATIONAL LABOR RELATIONS BOARD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 92–1550. Argued December 1, 1993—Decided January 24, 1994

After Michael Manso gave his employer, petitioner ABF Freight System, Inc. (ABF), a false excuse for being late to work, ABF ascertained that he was lying and fired him on the asserted ground of tardiness. He filed an unfair labor practice charge with the National Labor Relations Board (Board) and repeated his false tardiness excuse while testifying under oath before an Administrative Law Judge (ALJ), who denied him relief upon concluding that he had lied and that ABF had discharged him for cause. The Board reversed in relevant part, finding that ABF did not in fact fire Manso for lying but had seized upon his tardiness as a pretext to discharge him for earlier union activities. Notwithstanding his dishonesty, the Board ordered ABF to reinstate him with backpay. The Court of Appeals enforced the order, rejecting ABF's argument that awarding reinstatement and backpay to an employee who lied to his employer and to the ALJ violated public policy.

Held: Manso's false testimony under oath before the ALJ did not preclude the Board from granting him reinstatement with backpay. Although such misconduct is intolerable in a formal proceeding, 29 U. S. C. § 160(c) expressly delegates to the Board the primary responsibility for making remedial decisions, including awarding reinstatement with backpay, that best effectuate the policies of the National Labor Relations Act (Act) when the Board has substantiated an unfair labor practice. Confronted with that kind of express delegation, courts must give an agency's decision controlling weight unless it is arbitrary, capricious, or manifestly contrary to the Act. It cannot be said that the Board's remedial order in this case was an abuse of its broad discretion or that it was obligated to adopt a rigid rule that would foreclose relief in all comparable cases. Nor can its conclusions be faulted that Manso's reason for being late to work was ultimately irrelevant to whether antiunion animus actually motivated his discharge and that ordering effective relief in a case of this character promotes a vital public interest. It would be unfair to sanction Manso while indirectly rewarding the lack of candor of several ABF witnesses, whose testimony the ALJ and the Board refused to credit. Moreover, a categorical rule against relief might force the

Board to divert its attention away from its primary mission and toward resolving collateral credibility disputes. Pp. 322–325.

982 F. 2d 441, affirmed.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. KENNEDY, J., filed a concurring opinion, *post,* p. 325. SCALIA, J., filed an opinion concurring in the judgment, in which O'CONNOR, J., joined, *post,* p. 326.

John V. Jansonius argued the cause for petitioner. With him on the briefs were *Jill J. Weinberg* and *Alan Wright.*

Deputy Solicitor General Wallace argued the cause for respondent. With him on the brief were *Solicitor General Days, Michael R. Dreeben, Jerry M. Hunter, Nicholas E. Karatinos, Norton J. Come, Linda Sher,* and *John Emad Arbab.**

JUSTICE STEVENS delivered the opinion of the Court.

Michael Manso gave his employer a false excuse for being late to work and repeated that falsehood while testifying under oath before an Administrative Law Judge (ALJ). Notwithstanding Manso's dishonesty, the National Labor Relations Board (Board) ordered Manso's former employer to reinstate him with backpay. Our interest in preserving the integrity of administrative proceedings prompted us to grant certiorari to consider whether Manso's misconduct should have precluded the Board from granting him that relief.

**James D. Holzhauer, Timothy S. Bishop,* and *Daniel R. Barney* filed a brief for the American Trucking Associations as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Federation of Labor and Congress of Industrial Organizations by *Marsha S. Berzon* and *Laurence Gold;* for the Lawyers' Committee for Civil Rights Under Law et al. by *Herbert M. Wachtell, William H. Brown III, Norman Redlich, Thomas J. Henderson, Richard T. Seymour, Sharon R. Vinick, Mitchell Rogovin, Randal S. Milch, Robert C. Bell, Jr.,* and *Donna R. Lenhoff.*

E. Carl Uehlein, Jr., Joseph E. Santucci, Jr., Stephen A. Bokat, Robin S. Conrad, and *Mona C. Zeiberg* filed a brief for the Chamber of Commerce of the United States et al. as *amici curiae.*

I

Manso worked as a casual dockworker at petitioner ABF Freight System, Inc.'s (ABF's) trucking terminal in Albuquerque, New Mexico, from the summer of 1987 to August 1989. He was fired three times. The first time, Manso was 1 of 12 employees discharged in June 1988 in a dispute over a contractual provision relating to so-called "preferential casual" dockworkers.[1] The grievance Manso's union filed eventually secured his reinstatement; Manso also filed an unfair labor practice charge against ABF over the incident.

Manso's return to work was short lived. Three supervisors warned him of likely retaliation from top management—alerting him, for example, that ABF was "gunning" for him, App. 96, and that "the higher echelon was after [him]," *id.*, at 96–97. See also *ABF Freight System, Inc.*, 304 N. L. R. B. 585, 592, 597 (1991). Within six weeks ABF discharged Manso for a second time on pretextual grounds—ostensibly for failing to respond to a call to work made under a stringent verification procedure ABF had recently imposed upon preferential casuals.[2] Once again, a grievance panel ordered Manso reinstated.

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[1] ABF at this time had three dockworker classifications: those on the regular seniority list, nonpreferential casuals, and preferential casuals. *ABF Freight System, Inc.*, 304 N. L. R. B. 585, 589, n. 10 (1991). A supplemental labor agreement ABF negotiated with the union in April 1988 created the preferential casual dockworker classification with certain seniority rights. *Id.*, at 585–586.

[2] The policy required preferential casuals—though not other dockworkers—to be available by phone prior to a shift in case a foreman needed them to work. A worker who did not respond risked disciplinary action for failing to "protect his shift"; two such failures authorized ABF to discharge the worker. *Id.*, at 597. ABF issued a written warning to Manso on May 6, 1989, after he failed to respond to such a call. On June 19, a supervisor again asked a regular dockworker to summon Manso to work just prior to 6 a.m. for the 8:30 a.m. shift. When Manso did not

Manso's third discharge came less than two months later. On August 11, 1989, Manso arrived four minutes late for the 5 a.m. shift. At the time, ABF had no policy regarding lateness. After Manso was late to work, however, ABF decided to discharge preferential casuals—though not other employees—who were late twice without good cause. Six days later Manso triggered the policy's first application when he arrived at work nearly an hour late for the same shift. Manso telephoned at 5:25 a.m. to explain that he was having car trouble on the highway, and repeated that excuse when he arrived. ABF conducted a prompt investigation, ascertained that he was lying,[3] and fired him for tardiness under its new policy on lateness.

Manso filed a second unfair labor practice charge. In the hearing before the ALJ, Manso repeated his story about the car trouble that preceded his third discharge. The ALJ credited most of his testimony about events surrounding his dismissals, but expressly concluded that Manso lied when he told ABF that car trouble made him late to work. *Id.*, at 600. Accordingly, although the ALJ decided that ABF had illegally discharged Manso the second time because he was a

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answer, the employee who had dialed his number asked to dial it again, fearing he had misdialed. The supervisor denied permission and instead had the employee sign a form verifying that Manso had not responded. Manso was then discharged. The ALJ found that the special call policy discriminated against preferential casual dockworkers as a class, *id.*, at 598, 600; both the ALJ and the Board concluded that it was discriminatorily applied to Manso, *id.*, at 600, 589, n. 11.

[3] Manso told ABF management that his car had overheated on the highway, that he had to phone his wife to pick him up and take him to work. Manso also said a deputy sheriff stopped him for speeding in his ensuing rush. A plant manager who looked for Manso's overheated car on the highway found nothing, however, and the officer who Manso said issued him a warning for speeding told ABF officials—and later the ALJ—that Manso had been alone in the car.

party to the earlier union grievance,[4] the ALJ denied Manso relief for the third discharge based on his finding that ABF had dismissed Manso for cause. *Ibid.*

The Board affirmed the ALJ's finding that Manso's second discharge was unlawful, but reversed with respect to the third discharge. *Id.*, at 591. Acknowledging that Manso lied to his employer and that ABF presumably could have discharged him for that dishonesty, *id.*, at 590, n. 13, the Board nevertheless emphasized that ABF did not in fact discharge him for lying and that the ALJ's conclusion to the contrary was "a plainly erroneous factual statement of [ABF]'s asserted reasons."[5] Instead, Manso's lie "established only that he did not have a legitimate excuse for the August 17 lateness." *Id.*, at 589. The Board focused primarily on ABF's retroactive application of its lateness policy to include Manso's first time late to work, holding that ABF had "seized upon" Manso's tardiness "as a pretext to discharge him again and for the same unlawful reasons it discharged him on June 19."[6] In addition, though the Board deemed Manso's discharge unlawful even assuming the validity of ABF's general disciplinary treatment of preferential casuals, it observed that ABF's disciplinary approach and lack of uniform rules for all dockworkers "raise[d] more questions than they resolve[d]." *Id.*, at 590. The Board ordered ABF to reinstate Manso with backpay. *Id.*, at 591.

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[4] Specifically, the ALJ held that the dismissal violated §§ 8(a)(1), (3), and (4) of the National Labor Relations Act, 49 Stat. 452, as amended, 29 U. S. C. §§ 158(a)(1), (3), and (4).

[5] 304 N. L. R. B., at 590. The Board found that the record in this case unequivocally established that ABF did not treat Manso's dishonesty "in and of itself as an independent basis for discharge or any other disciplinary action." *Ibid.*

[6] *Id.*, at 591. The Board also noted that the supervisors' threats of retaliation and the earlier unlawful discharge under the verification policy provided "strong evidence" of unlawful motivation regarding Manso's third discharge. *Id.*, at 590.

The Court of Appeals enforced the Board's order. *Miera* v. *NLRB*, 982 F. 2d 441 (CA10 1992). Its review of the record revealed "abundant evidence of antiunion animus in ABF's conduct towards Manso," *id.*, at 446, including "ample evidence" that Manso's third discharge was not for cause, *ibid.* The court regarded as important the testimony in the record confirming that Manso would not have been discharged under ABF's new tardiness policy had he provided a legitimate excuse. *Ibid.* The court also rejected ABF's argument that awarding reinstatement and backpay to an employee who lied to his employer and to the ALJ violated public policy.[7] Noting that "Manso's original misrepresentation was made to his employer in an attempt to avoid being fired under a policy the application of which the Board found to be the result of antiunion animus," the court reasoned that the Board had wide discretion to ascertain what remedy best furthered the policies of the National Labor Relations Act (Act). *Id.*, at 447.

II

The question we granted certiorari to review is a narrow one.[8] We assume that the Board correctly found that ABF discharged Manso unlawfully in August 1989. We also assume, more importantly, that the Board did not abuse its discretion in ordering reinstatement even though Manso gave ABF a false reason for being late to work. We are concerned only with the ramifications of Manso's false testimony under oath in a formal proceeding before the ALJ. We recognize that the Board might have decided that such misconduct disqualified Manso from profiting from the proceeding, or it might even have adopted a flat rule precluding reinstatement when a former employee so testifies. As the case comes to us, however, the issue is not whether the Board *might* adopt such a rule, but whether it *must* do so.

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[7] ABF's public policy argument relies on several decisions refusing to enforce reinstatement orders where the employee had engaged in serious misconduct. See, *e. g.*, *Precision Window Mfg.* v. *NLRB*, 963 F. 2d 1105, 1110 (CA8 1992) (employee lied about extent of union activities and threatened to kill supervisor); *NLRB* v. *Magnusen*, 523 F. 2d 643, 646 (CA9 1975) (employee padded time card and lied about it under oath); *NLRB* v. *Commonwealth Foods, Inc.*, 506 F. 2d 1065, 1068 (CA4 1974) (employees engaged in theft from employer); *NLRB* v. *Breitling*, 378 F. 2d 663, 664 (CA10 1967) (employee confessed to stealing from employer).

[8] We limited our grant of certiorari to the third question in the petition: "Does an employee forfeit the remedy of reinstatement with backpay after the Administrative Law Judge finds that he purposefully testified falsely during the administrative hearing?" Pet. for Cert. i.

False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a "flagrant affront" to the truth-seeking function of adversary proceedings. See *United States* v. *Mandujano,* 425 U. S. 564, 576–577 (1976). See also *United States* v. *Knox,* 396 U. S. 77 (1969); *Bryson* v. *United States,* 396 U. S. 64 (1969); *Dennis* v. *United States,* 384 U. S. 855 (1966); *Kay* v. *United States,* 303 U. S. 1 (1938); *United States* v. *Kapp,* 302 U. S. 214 (1937); *Glickstein* v. *United States,* 222 U. S. 139, 141–142 (1911). If knowingly exploited by a criminal prosecutor, such wrongdoing is so "inconsistent with the rudimentary demands of justice" that it can vitiate a judgment even after it has become final. *Mooney* v. *Holohan,* 294 U. S. 103, 112 (1935). In any proceeding, whether judicial or administrative, deliberate falsehoods "well may affect the dearest concerns of the parties before a tribunal," *United States* v. *Norris,* 300 U. S. 564, 574 (1937), and may put the factfinder and parties "to the disadvantage, hindrance, and delay of ultimately extracting the truth by cross examination, by extraneous investigation or other collateral means." *Ibid.* Perjury should be severely sanctioned in appropriate cases.

ABF submits that the false testimony of a former employee who was the victim of an unfair labor practice should always preclude him from winning reinstatement with backpay. That contention, though not inconsistent with our appraisal of his misconduct, raises countervailing concerns. Most important is Congress' decision to delegate to the

Board the primary responsibility for making remedial decisions that best effectuate the policies of the Act when it has substantiated an unfair labor practice. The Act expressly authorizes the Board "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act]." 29 U. S. C. § 160(c). Only in cases of discharge for cause does the statute restrict the Board's authority to order reinstatement.[9] This is not such a case.

When Congress expressly delegates to an administrative agency the authority to make specific policy determinations, courts must give the agency's decision controlling weight unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984). Because this case involves that kind of express delegation, the Board's views merit the greatest deference. This has been our consistent appraisal of the Board's remedial authority throughout its long history of administering the Act.[10] As we explained over a half century ago:

> "Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy." *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 194 (1941).

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[9] "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause." 29 U. S. C. § 160(c).

[10] See *Virginia Elec. & Power Co.* v. *NLRB*, 319 U. S. 533, 539–540 (1943). We stated in *Virginia Electric* that such administrative determinations should stand "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Id.*, at 540.

Notwithstanding our concern about the seriousness of Manso's ill-advised decision to repeat under oath his false excuse for tardiness, we cannot say that the Board's remedial order in this case was an abuse of its broad discretion or that it was obligated to adopt a rigid rule that would foreclose relief in all comparable cases. Nor can we fault the Board's conclusions that Manso's reason for being late to work was ultimately irrelevant to whether antiunion animus actually motivated his discharge and that ordering effective relief in a case of this character promotes a vital public interest.

Notably, the ALJ refused to credit the testimony of several ABF witnesses, see, *e. g.*, 304 N. L. R. B., at 598, and the Board affirmed those credibility findings, *id.*, at 585. The unfairness of sanctioning Manso while indirectly rewarding those witnesses' lack of candor is obvious. Moreover, the rule ABF advocates might force the Board to divert its attention from its primary mission and devote unnecessary time and energy to resolving collateral disputes about credibility. Its decision to rely on "other civil and criminal remedies" for false testimony, cf. *St. Mary's Honor Center* v. *Hicks*, 509 U. S. 502, 521 (1993), rather than a categorical exception to the familiar remedy of reinstatement is well within its broad discretion.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KENNEDY, concurring.

I join the opinion of the Court and agree as well with the concerns expressed by JUSTICE SCALIA. Our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress for the latter. At the very least, when we proceed on the assumption that perjury was committed, the Government ought not to suggest, as it seemed to do here, that one who violates his testimonial oath is no worse than the student who claims the dog ate his homework. See Tr. of Oral Arg. 42.

The Board's opinions show that it can become quite exercised about trial-related misconduct that obstructs its own processes. See *Lear-Siegler Management Service Corp.*, 306 N. L. R. B. 393, 394 (1992) (tolling the backpay award of an employee who threatened a witness, because such manipulation undermined "[t]he integrity of the Board's judicial process"). The Board seems more blithe, however, about the potential for dishonesty to disrupt the workplace. See *Owens Illinois, Inc.*, 290 N. L. R. B. 1193 (1988) (reinstating and awarding backpay to an employee who lied under oath, because the employer "failed to meet its burden of establishing that [the employee] is unfit for further employment"). True, the gravest consequence of lying under oath is the affront to the law itself. But both employer and employee have reason to insist upon honesty in the resolution of disputes within the workplace itself. And this interest, too, is not beyond the Board's discretion to take into account in fashioning appropriate relief.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

It is ordinarily no proper concern of the judge how the Executive chooses to exercise discretion, so long as it be within the scope of what the law allows. For that reason, judicial dicta criticizing unintelligent (but nonetheless lawful) executive action are almost always inappropriate. The context changes, however, when the exercise of discretion relates to the integrity of the unitary adjudicative process that begins in an administrative hearing before a federal administrative law judge and ends in a judgment of this or some other federal court. Agency action or inaction that undermines and dishonors that process undermines and dishonors the legal system—undermines and dishonors the courts. Judges may properly protest, no matter how lawful (and hence unreversible) the agency action or inaction may be. Such a protest is called for in the present case, in which the Board has displayed—from its initial decision through its defense of that decision in this Court—an unseemly toleration of perjury in the course of adjudicative proceedings.

Michael Manso, the employee to whom the Board awarded backpay *and* reinstatement, testified in this case before Administrative Law Judge Walter H. Maloney the week of January 8, 1990. He was placed under oath—presumably standing up, his right hand raised, to respond to the form of oath set forth in the NLRB Judges' Manual § 17008 (1984):

> "Do you solemnly swear that the testimony which you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?"

He then proceeded to lie to the administrative tribunal, as he had earlier lied to his employer, concerning the reason he reported an hour late for work on August 17, 1989. He said that his car had broken down; that he called his wife, who came in her pajamas to pick him up; that he drove the rest of the way to work, with his wife, and was stopped for speeding along the way. The employer produced the officer that stopped him, who testified with assurance that Manso was all alone; that Manso mentioned no car trouble as an excuse for his speeding, but simply that he was late for work; and that the officer himself observed no car trouble. Hearsay evidence admitted (without objection) at the hearing showed that an ABF official, after Manso told his breakdown story on August 17, drove out to the portion of the highway where Manso said he had left the disabled vehicle, and found it not to be there. Administrative Law Judge Maloney found that "Manso was lying to the Respondent when he reported that his car had overheated and that he was late for work because of car trouble"—which meant, of course that he was also lying under oath when he repeated that story. *ABF Freight System, Inc.*, 304 N. L. R. B. 585, 600 (1991). The ALJ did not punish the false testimony, but his finding that the dismissal on August 17 was for cause had something of that effect, depriving Manso of reinstatement.

The Board itself accepted the ALJ's finding that the car-breakdown story was a lie, but since it found that the *real* reason for the August 17 dismissal was neither Manso's lateness nor his dishonesty, but rather retaliation for his filing of an earlier unfair-labor-practice complaint, it ordered Manso's reinstatement. In stark contrast to today's opinion for the Court, the Board's opinion did not carefully weigh the pros and cons of using the Board's discretion in the conferral of relief to protect the integrity of its proceedings. It weighed those pros and cons *not at all.* Indeed, it *mentioned the apparent perjury not at all,* as though that is just part of the accepted background of Board proceedings, in no way worthy of note. That insouciance persisted even through the filing of the Board's brief in this Court, which makes the astounding statement that, in light of his "history of mistreatment," Manso's lying under oath, "though unjustifiable, is understandable." Brief for Respondent 22, n. 15. (In that context, of course, the plain meaning of "to understand" is "[t]o know and be tolerant or sympathetic toward." American Heritage Dictionary 1948 (3d ed. 1992).)

Well, I am not understanding of lying under oath, whatever the motivation for it, and I do not believe that any law enforcement agency of the United States ought to be. Title 18 U. S. C. § 1621 provides:

> "Whoever—
>
> ". . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify . . . truly, . . . willfully and contrary to such oath states . . . any material matter which he does not believe to be true . . .
>
> . . . . .

> "is guilty of perjury and shall . . . be fined not more than $2,000 or imprisoned not more than five years, or both. . . ."

United States Attorneys doubtless cannot prosecute perjury indictments for all the lies told in the Nation's federal proceedings—not even, perhaps, for all the lies so cleanly nailed as was the one here. Not only, however, did the Board not refer the matter for prosecution, it did not impose, indeed did not even explicitly consider imposing, another sanction available to it (and not generally available to federal judges): denying discretionary relief because of the intentional subversion of the Board's processes.

While the Court is correct that we have no power to compel the Board to apply such a sanction, nor even, perhaps, to require that the Board's opinion explicitly consider it, neither was the Board's action in this case as eminently reasonable as the Court makes it out to be. Nor does it deserve the characterization of being "*well* within [the Board's] broad discretion," *ante*, at 325 (emphasis added). In my estimation, it is at the very precipice of the tolerable, particularly as concerns the Board's failure even to consider and discuss the desirability of limiting its discretionary relief.

Denying reinstatement would not, as the Court contends, involve the "unfairness of sanctioning Manso while indirectly rewarding [ABF] witnesses' lack of candor." *Ibid.* First of all, no "indirect reward" comes to ABF, which receives nothing from the Board. There is a world of difference between the mere inaction of failing to punish ABF for lying (which is the "indirect reward" that the Court fears) and the beneficence of conferring a nonmandated award upon Manso *despite* his lying (which is the much greater evil that the Court embraces). The principle that a perjurer should not be rewarded with a judgment—even a judgment otherwise deserved—where there is discretion to deny it, has a long and sensible tradition in the common law. The "unclean hands" doctrine "closes the door of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant." *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.*, 324 U. S. 806, 814 (1945) (denying relief because of perjury). See H. McClintock, Principles of Equity § 26, p. 63, and n. 75 (2d ed. 1948). And the Board itself has sometimes applied this sanction in the past. See, *e. g., D. V. Copying & Printing, Inc.*, 240 N. L. R. B. 1276 (1979); *O'Donnell's Sea Grill*, 55 N. L. R. B. 828 (1944). In any case, there is no realistic comparison between the ABF managers' disbelieved testimony concerning motivations for firing and Manso's crystal-clear lie that he was where he was not. The latter is the stuff of perjury prosecutions; the former is not.

The Court is correct that an absolute rule requiring the denial of discretionary relief for perjury "might force the Board to divert its attention from its primary mission and devote unnecessary time and energy to resolving collateral disputes about credibility." *Ante*, at 325. But intelligent and conscientious application of the Board's supposed rule *permitting* denial of discretionary relief for perjury would not have that effect—and such application should probably have occurred, and should surely have been considered, in an obvious case such as this. Nor am I as impressed as the Court is by the Board's assertion that "ordering effective relief in a case of this character promotes a vital public interest." *Ibid.* Assuredly it does, but *plenty* of effective relief was ordered here without adding Manso's reinstatement, including (1) the entry of a cease-and-desist order subjecting ABF to severe sanctions if it commits similar unfair labor practices in the future, (2) the award of backpay to Manso for the period from his unlawful discharge on June 19, 1989, to the date of his subsequent reinstatement, and (3) the posting of a notice on ABF's premises, reciting its commitments under the cease-and-desist order, and its commitment to give

Manso backpay. All of this would have made it clear enough to ABF and to ABF's employees that violating the National Labor Relations Act does not pay. Had the posted notice also included, instead of ABF's commitment to reinstate Manso (which is what the Board ordered), a statement to the effect that Manso's reinstatement *would* have been ordered but for his false testimony, then it *also* would have been made clear to ABF and to ABF's employees that perjury does not pay.

I would have felt no need to write separately if I thought that, as the Court puts it, the Board has simply decided "to rely on 'other civil and criminal remedies' for false testimony." *Ibid.* My impression, however, from the Board's opinion and from its presentation to this Court, is that it is really not very much concerned about false testimony. I concur in the judgment of the Court that the NLRB did nothing against the law, and regret that it missed an opportunity to do something for the law.

DEPARTMENT OF REVENUE OF OREGON *v.* ACF INDUSTRIES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–74. Argued November 8, 1993—Decided January 24, 1994

The Railroad Revitalization and Regulatory Reform Act of 1976, in relevant part, forbids States to impose (1) higher property tax rates and assessment ratios upon "rail transportation property" than upon "other commercial and industrial property," 49 U. S. C. §§ 11503(b)(1)–(3), and (2) "another tax that discriminates against a rail carrier providing transportation," § 11503(b)(4). Oregon exempts from its ad valorem property tax various classes of business personal property, but not railroad cars owned by respondent companies. They filed suit in the District Court, alleging that the tax violates § 11503(b)(4) because it exempts certain classes of commercial property from taxation while taxing railroad cars in full. Both the District Court and the Court of Appeals agreed that discriminatory property tax exemptions may be challenged under subsection (b)(4). However, the Court of Appeals reversed the lower court's finding that Oregon's tax complied with the provision, holding instead that respondents were entitled to the same exemption enjoyed by preferred property owners.

Held: Section 11503 does not limit the States' discretion to exempt nonrailroad property, but not railroad property, from generally applicable ad valorem property taxes. Pp. 338–348.

(a) Respondents' position that "another tax that discriminates against a rail carrier" is a residual category designed to reach any discriminatory state tax, including property taxes, not covered by subsections (b)(1)–(3) is plausible only if subsection (b)(4) is read in isolation. However, the structure of § 11503 as a whole supports the view that subsection (b)(4) does not speak to property tax exemptions. "[C]ommercial and industrial property," which serves as the comparison class for measuring property tax discrimination under subsections (b)(1)–(3), is defined in subsection (a)(4) as "property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to commercial or industrial use and subject to a property tax levy." The interplay between subsections (b)(1)–(3) and this definition is central to subsection (b)(4)'s interpretation. For example, Congress' exclusion of agricultural land from the definition demonstrates its intent to permit the States to tax railroad property at a higher rate than agricultural land, notwithstanding subsection (b)(3)'s general prohibition of rate discrimination. To consider such a tax "another tax" under subsection (b)(4) would subvert the statutory plan by reading subsection (b)(4) to prohibit what subsection (b)(3), in conjunction with subsection (a)(4), was designed to allow. The result would contravene the elementary canon of construction that a statute should be interpreted so as not to render one part inoperative. Pp. 338–341.

(b) The phrase "subject to a property tax levy" further qualifies the subsection (a)(4) definition. When used elsewhere in § 11503, that phrase means property that is taxed; and since identical words used in different parts of the same Act are intended to have the same meaning, the phrase must carry the same meaning in subsection (a)(4), *Sorenson* v. *Secretary of Treasury*, 475 U. S. 851, 860. Thus, exempt property is not part of the comparison class. It would be illogical to conclude that Congress, having allowed States to grant property tax exemptions in subsections (b)(1)–(3), would turn around and nullify its own choice in subsection (b)(4). Pp. 341–343.

(c) Other considerations reinforce the foregoing construction of the statute. Section 11503's silence on the subject of tax exemptions—in light of the explicit prohibition of tax rate and assessment ratio discrimination—reflects a determination to permit the States to leave their exemptions in place. Principles of federalism compel this view, for a statute is interpreted to pre-empt traditional state powers only if that result is the clear and manifest purpose of Congress. The statute's legislative history casts no doubt upon this interpretation. Nor does the interpretation lead to an anomalous result. Since railroads are not the only commercial entities subject to Oregon's tax, it need not be decided whether subsection (b)(4) would prohibit a tax that did single out railroad property. And since it is within Congress' sound discretion to weigh the benefit of preserving some exemptions against the benefit of protecting rail carriers from every tax scheme that favors some nonrailroad property, the result reached here is not so bizarre that Congress could not have intended it. See *Demarest* v. *Manspeaker*, 498 U. S. 184, 191. Pp. 343–348.

961 F. 2d 813, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, O'CONNOR, SCALIA, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 348.

Virginia L. Linder, Solicitor General of Oregon, argued the cause for petitioner. With her on the briefs were *Theodore R. Kulongoski*, Attorney General, *Thomas A. Balmer*, Deputy Attorney General, and *Robert M. Atkinson,* Assistant Attorney General.

Kent L. Jones argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Acting Assistant Attorney General Paup, Deputy Solicitor General Wallace, Gary R. Allen, Paul M. Geier, Dale C. Andrews, S. Mark Lindsey,* and *G. Joseph King.*

Carter G. Phillips argued the cause for respondents. With him on the brief was *James W. McBride.**

JUSTICE KENNEDY delivered the opinion of the Court.

The power of state and local governments to impose ad valorem property taxes upon railroads and other interstate carriers has been the source of recurrent litigation under the Commerce Clause and the Due Process Clause. See, *e. g., Central R. Co. of Pa.* v. *Pennsylvania,* 370 U. S. 607 (1962); *Braniff Airways, Inc.* v. *Nebraska Bd. of Equalization and Assessment,* 347 U. S. 590 (1954); *Morgan* v. *Parham,* 16 Wall. 471 (1873). In the case before us, a state property tax is challenged under a federal statute, the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act). Pub. L. 94–210, 90 Stat. 31.

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*Briefs of *amici curiae* urging reversal were filed for the State of Iowa by *Bonnie J. Campbell,* Attorney General, and *C. A. Daw;* for the State of Washington et al. by *Christine O. Gregoire,* Attorney General of Washington, and by the Attorneys General for their respective States as follows: *Grant Woods* of Arizona, *Daniel E. Lungren* of California, *Robert A. Butterworth* of Florida, *Larry EchoHawk* of Idaho, *Chris Gorman* of Kentucky, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Tom Udall* of New Mexico, *Robert Abrams* of New York, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *Lee Fisher* of Ohio, *Susan B. Loving* of Oklahoma, *T. Travis Medlock* of South Carolina, *Charles W. Burson* of Tennessee, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *Stephen D. Rosenthal* of Virginia, *James E. Doyle* of Wisconsin, and *Joseph B. Meyer* of Wyoming; and for the National Conference of State Legislatures et al. by *Richard Ruda* and *Richard G. Taranto.*

Richard A. Malm and *Thomas W. Andrews* filed a brief for the Railway Progress Institute et al. as *amici curiae* urging affirmance.

Briefs of *amici curiae* were filed for the State of California by *Daniel E. Lungren,* Attorney General, *Timothy G. Laddish,* Assistant Attorney General, *Richard F. Finn,* Supervising Deputy Attorney General, and *Robert E. Murphy* and *Marguerite C. Stricklin,* Deputy Attorneys General; for the Association of American Railroads by *Betty Jo Christian, Timothy M. Walsh, Jerald S. Howe, Jr., Robert W. Blanchette,* and *Kenneth P. Kolson;* and for Interstate Air Carriers by *Jay R. Martin, Peter W. Davis,* and *John E. Carne.*

The question presented is whether the State of Oregon violated the statute by imposing an ad valorem tax upon railroad property while exempting various other, but not all, classes of commercial and industrial property. We hold that a State may grant exemptions from a generally applicable ad valorem property tax without subjecting the taxation of railroad property to challenge under the relevant provision of the 4–R Act, § 306(1)(d), 49 U. S. C. § 11503(b)(4).

I

Oregon imposes an ad valorem tax upon all real and personal property within its jurisdiction, except property granted an express exemption. Ore. Rev. Stat. § 307.030 (1991). Various classes of business personal property are exempt, including agricultural machinery and equipment; nonfarm business inventories; livestock; poultry; bees; furbearing animals; and agricultural products in the possession of farmers. §§ 307.325, 307.400. Standing timber is also exempt, but is subject to a severance tax when harvested. § 321.272. Oregon, like many other States, exempts motor vehicles as well, instead levying upon them a modest annual registration fee. §§ 803.585, 803.420(1).

Respondents, called the "Carlines" in this litigation, are eight companies that lease railroad cars to railroads and shippers. The railroad cars are considered "tangible personal property" under Oregon law, § 307.030, and are not exempt from taxation. The Carlines brought suit in United States District Court under § 306(1)(d) of the 4–R Act, seeking declaratory and injunctive relief against the assessment, levy, and collection of the State's property tax upon their railroad cars.

Congress enacted the 4–R Act in part to "restore the financial stability of the railway system of the United States." § 101(a), 90 Stat. 33. When drafting the legislation, Congress was aware that the railroads "'are easy prey for State and local tax assessors' in that they are 'nonvoting, often nonresident, targets for local taxation,' who cannot easily remove themselves from the locality." *Western Air Lines, Inc.* v. *Board of Equalization of S. D.,* 480 U. S. 123, 131 (1987) (quoting S. Rep. No. 91–630, p. 3 (1969)). Section 306 of the 4–R Act, now codified at 49 U. S. C. § 11503, addresses this concern by prohibiting the States (and their subdivisions) from enacting certain taxation schemes that discriminate against railroads. See *Burlington Northern R. Co.* v. *Oklahoma Tax Comm'n,* 481 U. S. 454, 457 (1987).

The relevant provisions of § 11503 are contained in subsection (b), which states:

> "The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:
>
> "(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> "(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.
>
> "(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

> "(4) impose another tax that discriminates against a rail carrier providing transportation . . . ."

The reach of subsections (b)(1)–(3) is straightforward: These provisions forbid the imposition of higher assessment ratios or tax rates upon rail transportation property than upon "other commercial and industrial property." The scope of subsection (b)(4), which forbids the imposition of "another tax that discriminates against a rail carrier providing transportation," is not as clear.

The Carlines do not challenge Oregon's ad valorem property tax under subsections (b)(1)–(3). We attribute this choice to the fact that the State subjects all nonexempt property "to assessment and taxation in equal and ratable proportion." Ore. Rev. Stat. § 307.030 (1991). Rather, it is the Carlines' contention that Oregon's tax should be considered "another tax that discriminates against a rail carrier," in violation of subsection (b)(4), because it exempts certain classes of commercial and industrial property while taxing railroad cars in full.

The District Court, after reviewing a stipulated record, held that discriminatory property tax exemptions are subject to challenge under subsection (b)(4). On the facts presented, however, the court determined that Oregon's ad valorem property tax complied with the provision. The court observed that, in other cases, only those state taxes exempting more than 50% of nonrailroad commercial personal property had been found to contravene subsection (b)(4). See *Trailer Train Co.* v. *Leuenberger,* 885 F. 2d 415 (CA8 1988), cert. denied, 490 U. S. 1066 (1989); *Burlington Northern R. Co.* v. *Bair,* 766 F. 2d 1222 (CA8 1985). Because (according to the court's calculations) Oregon exempted only 31.4% of nonrailroad commercial personal property from taxation, the court granted judgment to the State.

The Court of Appeals reversed. 961 F. 2d 813 (CA9 1992). In accordance with Circuit precedent, see *ACF Industries, Inc.* v. *Arizona,* 714 F. 2d 93, 94 (CA9 1983), the court acknowledged that subsections (b)(1)–(3) do not speak to the question of discriminatory property tax exemptions. Like the District Court, however, the Court of Appeals accepted the Carlines' contention that property tax exemptions are subject to challenge under subsection (b)(4). The court explained that Congress enacted § 11503 to "'prevent tax discrimination against railroads *in any form whatsoever.*'" 961 F. 2d, at 820 (emphasis in original) (citing *Ogilvie* v. *State Bd. of Equalization of N. D.*, 657 F. 2d 204, 210 (CA8), cert. denied, 454 U. S. 1086 (1981)).

Rejecting the District Court's apparent view that ad valorem tax schemes exempting less than 50% of nonrailroad business property are not proscribed by subsection (b)(4), the Court of Appeals held that the "most natural reading" of the provision dictates that "*any* exemption given to other taxpayers but not to railroads" is forbidden, with possible room for "a *de minimis* level of exemption[s]." 961 F. 2d, at 822 (emphasis in original). The court found that Oregon's property tax, under the calculation most generous to the State, exempted 25% of nonrailroad commercial property, far exceeding any possible *de minimis* exception. On this ground, the court concluded that the State's taxation of railroad property violated subsection (b)(4). *Id.*, at 823. Holding that the Carlines "were entitled to the same total exemption preferred property owners enjoyed," the court enjoined the State from levying any tax upon the Carlines' railroad property. *Ibid.*

We granted certiorari, 508 U. S. 905 (1993), and now reverse.

II

Before passing upon the validity of Oregon's ad valorem property tax under § 11503(b)(4), the Court of Appeals and the District Court addressed a preliminary question: Whether a tax upon railroad property is even subject to challenge under subsection (b)(4) on the ground that certain other classes of commercial and industrial property are exempt. We consider the same question.

Both parties contend that the plain meaning of subsection (b)(4), which prohibits "another tax that discriminates against a rail carrier," dictates an answer in their favor. In the State's view, the word "another" means "different from that which precedes it." Because subsections (b)(1)–(3) address property taxes and only property taxes, it follows that the term "another tax" in subsection (b)(4) must mean "a tax different from a property tax." The State concludes that subsection (b)(4) does not speak to discriminatory property tax exemptions for the simple reason that the provision does not speak to property taxes at all.

The Carlines, like the Court of Appeals, take a different view. They understand the phrase "another tax that discriminates against a rail carrier" to be a residual category designed to reach any discriminatory state tax, including discriminatory property taxes, not covered by subsections (b)(1)–(3). It follows that property tax exemptions disfavoring railroad transportation property—exemptions the Carlines in effect admit fall outside the scope of subsections (b)(1)–(3), see Brief for Respondents 16–17—are within the ambit of subsection (b)(4). Accord, *e. g., Trailer Train Co.* v. *Leuenberger,* 885 F. 2d 415, 417–418 (CA8 1988), cert. denied, 490 U. S. 1066 (1989); *Department of Revenue of Fla.* v. *Trailer Train Co.,* 830 F. 2d 1567, 1573 (CA11 1987). If Congress had intended to exclude property taxes from the reach of subsection (b)(4), the Carlines contend, it would have drafted the provision to prohibit "any tax other than a property tax," and not phrased the statute as it did. Brief for Respondents 17.

Both the State's and the Carlines' readings are defensible if subsection (b)(4) is read in isolation, cf. *Burlington Northern R. Co.* v. *Oklahoma Tax Comm'n,* 481 U. S., at 461 (language of subsection (b)(1) "plainly declares [its] purpose"), and so we must look elsewhere to determine its meaning.

The structure of § 11503 as a whole does yield an answer, one adverse to the Carlines' challenge to Oregon's property tax. We conclude that a State may grant exemptions from a generally applicable ad valorem property tax without exposing the taxation of railroad property to invalidation under subsection (b)(4).

Subsections (b)(1)–(3) of § 11503, as noted, forbid the imposition of higher property tax rates and assessment ratios upon "rail transportation property" than upon "other commercial and industrial property." 49 U. S. C. §§ 11503(b)(1)–(3). "Commercial and industrial property," which serves as the comparison class for measuring unlawful discrimination under those provisions, is defined as "property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy." § 11503(a)(4).

The interplay between subsections (b)(1)–(3) and the definition of "commercial and industrial property" in subsection (a)(4) is central to the interpretation of subsection (b)(4). For example, the definition of "commercial and industrial property" excludes "land used primarily for agricultural purposes." The fact that Congress made this particular exclusion demonstrates its intent to permit the States to tax railroad property at a higher rate than agricultural land, notwithstanding subsection (b)(3)'s general prohibition of rate discrimination. One still could maintain, we suppose, that taxing railroad property at a higher rate than agricultural land should be considered "another tax that discriminates against a rail carrier," and thus forbidden under subsection (b)(4). That interpretation, however, would subvert the statutory plan by reading subsection (b)(4) to prohibit what subsection (b)(3), in conjunction with subsection (a)(4), was designed to allow. The result would contravene the "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative."

Mountain States Telephone & Telegraph Co. v. *Pueblo of Santa Ana,* 472 U. S. 237, 249 (1985) (internal quotation marks omitted).

Congress qualified the definition of "commercial and industrial property" further, limiting the comparison class to property "subject to a property tax levy." 49 U. S. C. § 11503(a)(4). The statute does not define this phrase, which on its face could bear one of two interpretations: (1) taxed property; or (2) taxable property, a broader category consisting of the general mass of property within the State's jurisdiction and power to tax, including property that enjoys a current exemption.

The first interpretation has been the subject of some criticism, see *Western Air Lines, Inc.* v. *Board of Equalization of S. D.,* 480 U. S., at 135 (White, J., concurring),* but we believe it follows from the way Congress used identical language elsewhere in § 11503. Section 11503(c) confers jurisdiction upon United States district courts to enforce the terms of § 11503(b) despite the bar otherwise imposed by the Tax Injunction Act, 28 U. S. C. § 1341. Subsection (c)(1) grants district courts the power (under certain circumstances not pertinent here) to prohibit

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* *Western Air Lines, Inc.* v. *Board of Equalization of S. D.* raised the question whether certain property tax exemptions were prohibited under the antidiscrimination provisions of the Airport and Airway Improvement Act of 1982 (AAIA), 49 U. S. C. App. §§ 1513(d)(1)(A)–(C), which are identical for all relevant purposes to analogous provisions under the 4–R Act, 49 U. S. C. §§ 11503(b)(1)–(3). The case was on appeal from the Supreme Court of South Dakota, which had held that such exemptions were not subject to challenge under the AAIA. *Western Air Lines, Inc.* v. *Hughes County,* 372 N. W. 2d 106 (1985). The court rested this ruling upon its conclusion that the definition of "commercial and industrial property" in the AAIA, 49 U. S. C. App. § 1513(d)(2)(D)—which, like the parallel definition in 49 U. S. C. § 11503(a)(4), is limited to property "subject to a property tax levy"—included taxed property but not exempt property, 372 N. W. 2d, at 110. Because the comparison class against which tax discrimination was measured under §§ 1513(d)(1)(A)–(C) did not include exempt property, the court reasoned that the AAIA did not prohibit property tax exemptions. We affirmed, but on grounds unrelated to the court's construction of the terms "commercial and industrial property" and "subject to a property tax levy." *Western Air Lines, Inc.* v. *Board of Equalization of S. D.,* 480 U. S., at 129–134. Justice White concurred, but expressed his view that the "ground on which the South Dakota Supreme Court sustained the tax" was "plainly improvident." *Id.,* at 135; see also *Northwest Airlines, Inc.* v. *North Dakota,* 358 N. W. 2d 515, 517 (N. D. 1984).

> "an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property *subject to a property tax levy* in the assessment jurisdiction has to the true market value of all other commercial and industrial property." (Emphasis added.)

In the context of this provision, which concerns the differential assessment of taxed property, the words "property subject to a property tax levy" must mean "taxed property." Given the "normal rule of statutory construction" that "'"identical words used in different parts of the same act are intended to have the same meaning,"'" *Sorenson* v. *Secretary of Treasury,* 475 U. S. 851, 860 (1986) (quoting *Helvering* v. *Stockholms Enskilda Bank,* 293 U. S. 84, 87 (1934) (in turn quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U. S. 427, 433 (1932))), that phrase must carry the same meaning in subsection (a)(4), where it qualifies the definition of "commercial and industrial property."

All this bears on the case before us. Because property "subject to a property tax levy" means property that is taxed, the definition of "commercial and industrial property" excludes property that is exempt. Exempt property, then, is not part of the comparison class against which discrimination is measured under subsections (b)(1)–(3), and it follows that railroads may not challenge property tax exemptions under those provisions.

As was the case with agricultural land, we must pay heed to the fact that Congress placed exempt property beyond the reach of subsections (b)(1)–(3). It would be illogical to conclude that Congress, having allowed the States to grant property tax exemptions in subsections (b)(1)–(3), would turn around and nullify its own choice in subsection (b)(4). So the Carlines' reading of subsection (b)(4), while plausible when viewed in isolation (see *supra*, at 339), is untenable in light of § 11503 as a whole. See *Gade* v. *National Solid Wastes Management Assn.*, 505 U. S. 88, 99 (1992); see also *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law"). It is true that tax exemptions, as an abstract matter, could be a variant of tax discrimination. See *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803 (1989). The structure of § 11503, however, warrants the conclusion that subsection (b)(4) does not limit state discretion to levy a tax upon railroad property while exempting various classes of nonrailroad property.

Other considerations reinforce our construction of the statute. In drafting § 11503, Congress prohibited discriminatory tax rates and assessment ratios in no uncertain terms, see 49 U. S. C. §§ 11503(b)(1)–(3), and set forth precise standards for judicial scrutiny of challenged rate and assessment practices, see §§ 11503(c)(1)–(2). By contrast, the statute does not speak with any degree of particularity to the question of tax exemptions. Subsection (b)(4), which prohibits the States from "impos[ing] another tax that discriminates against a rail carrier," is, at best, vague on the point. Congress did not state whether exemptions are a form of forbidden discrimination against rail carriers, and further did not provide a standard for courts to distinguish valid from invalid exemption schemes.

Had Congress, as a condition of permitting the taxation of railroad property, intended to restrict state power to exempt nonrailroad property, we are confident that it would have spoken with clarity and precision. Property tax exemptions are an important aspect of state and local tax policy. It was common at the time § 11503 was drafted, as it is now, for States with generally applicable ad valorem property taxes to exempt various classes of commercial property. Before 1960, a number of States granted such exemptions. See, *e. g.,* Mo. Rev. Stat. § 150.040 (1949) (exempting unmanufactured articles consigned for sale and held by commission merchants); N. J. Rev. Stat. § 54:4–3.20 (1937) (exempting personal property stored in a public warehouse); Vt. Stat. Ann., Tit. 32, § 3802 (1959) (exempting tools and implements possessed by mechanics and farmers, and highway-building equipment); see also Jacobs, Exemption of Tangible Personalty, in Tax Exemptions 141, 146 (1939) (by 1938, 16 States permitted "temporary exemption of newly located or newly constructed plants, and the machinery and equipment in such plants"). By the 1960's, about 20 States granted real and personal property tax exemptions to pollution control facilities. See McNulty, State Tax Incentives to Fight Pollution, 56 A. B. A. J. 747, 748, and n. 8 (Aug. 1970). By 1971, still well before enactment of the 4–R Act, a majority of the States exempted one or more classes of business personal property, including business inventories, raw materials used in textile manufacturing, manufacturing machinery and allied equipment, and mechanics tools. See Education Commission of the States, Property Assessment and Exemptions: They Need Reform, Table C–1 (Mar. 10, 1973). Given the prevalence of property tax exemptions when Congress enacted the 4–R Act, § 11503's silence on the subject—in light of the explicit prohibition of tax rate and assessment ratio discrimination—reflects a determination to permit the States to leave their exemptions in place.

Principles of federalism support, in fact compel, our view. Subsection (b)(4), like the whole of § 11503, sets limits upon the taxation authority of state government, an authority we have recognized as central to state sovereignty. See, *e. g.*, *Tully* v. *Griffin, Inc.*, 429 U. S. 68, 73 (1976); *Railroad Co.* v. *Peniston*, 18 Wall. 5, 29 (1873). When determining the breadth of a federal statute that impinges upon or pre-empts the States' traditional powers, we are hesitant to extend the statute beyond its evident scope. See *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 533 (1992) ("We do not, absent unambiguous evidence, infer a scope of pre-emption beyond that which clearly is mandated by Congress' language") (BLACKMUN, J., concurring); *id.*, at 523 (opinion of STEVENS, J.); *R. J. Reynolds Tobacco Co.* v. *Durham County*, 479 U. S. 130, 140 (1986). We will interpret a statute to pre-empt the traditional state powers only if that result is "the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). As explained above, neither subsection (b)(4) nor the whole of § 11503 meets this standard with regard to the prohibition of property tax exemptions.

The Carlines contend that the legislative history of § 11503 casts doubt upon our interpretation, but the history—to the extent it has any relevance to our inquiry—affords the Carlines no comfort. The excerpts from the legislative record cited by the Carlines do nothing more than manifest Congress' general concern with the discriminatory taxation of rail carriers. See, *e. g.*, S. Rep. No. 94–595, p. 166 (1976) (describing the Senate bill, which the Conference adopted, as prohibiting "the imposition of any other tax which results in the discriminatory treatment of any common or contract carrier"). The Carlines do not point to a single instance in the legislative record suggesting that Congress had any particular concern with property tax exemptions, or that Congress intended to prohibit exemptions in subsection (b)(4). In fact, the available evidence suggests the opposite of what the Carlines would have us believe. See 120 Cong. Rec.

38734 (1974) (providing assurances that subsection (b)(4) would not prevent the States from granting tax exemptions to encourage industrial development) (remarks of Reps. Staggers, Adams, and Kuykendall).

Nor do the Carlines draw our attention to a single instance in the 15-year legislative history of the 4–R Act in which representatives of the railroad industry expressed concern about discriminatory property tax exemptions. In fact, when urging the Senate to adopt subsection (b)(4), industry representatives characterized the provision as prohibiting only discriminatory in lieu taxes and gross receipts taxes; property tax exemptions, in contrast, were not mentioned. See Hearings before the Subcommittee on Surface Transportation of the Senate Committee on Commerce on Legislation Relating to Rail Passenger Service, 94th Cong., 1st Sess., pt. 5, pp. 1837, 1883 (1975). In sum, the Carlines' argument with respect to legislative history is without foundation.

As a final matter, we address the contention that our interpretation of subsection (b)(4) leads to an anomalous result. The Carlines maintain that it would be nonsensical for Congress to prohibit the States from imposing higher tax rates or assessment ratios upon railroad property than upon other taxed property, while at the same time permitting the States to exempt some or all classes of nonrailroad property altogether. That result, it is argued, prohibits discrimination of a mild form, but permits it in the extreme. We think our interpretation is not at all implausible.

To begin with, this is not a case in which the railroads—either alone or as part of some isolated and targeted group—are the only commercial entities subject to an ad valorem property tax. Cf. *Burlington Northern R. Co.* v. *Superior,* 932 F. 2d 1185 (CA7 1991) (occupation tax on owners and operators of "iron ore concentrates docks," in practical effect, applied only to docks owned by one particular rail carrier). If such a case were to arise, it might be incorrect to say that the State "exempted" the nontaxed property. Rather, one could say that the State had singled out railroad property for discriminatory treatment. See J. Hellerstein & W. Hellerstein, State and Local Taxation 973 (5th ed. 1988) (the term "exemption" does not mean every exclusion from the reach of a levy, but rather exclusions of "property, persons, transactions . . . which are logically within the tax base"). On the record before us, Oregon's ad valorem property tax does not single out railroad property in that manner, and we need not decide whether subsection (b)(4) would prohibit a tax of that nature.

In addition, though some may think it unwise to forbid discrimination in tax rates and assessment ratios while permitting exemptions of certain nonrailroad property, the result is not "so bizarre that Congress 'could not have intended'" it. *Demarest* v. *Manspeaker,* 498 U. S. 184, 191 (1991) (citing *Griffin* v. *Oceanic Contractors, Inc.,* 458 U. S. 564, 575 (1982)). About half of the States grant property tax exemptions to encourage investment in air and water pollution control devices. See 1 CCH State Tax Guide 691–692 (1992). And it is standard practice for States to grant exemptions to commercial entities for other beneficial purposes. See, *e. g.,* La. Const., Art. VII, §21(F) (10-year exemption for any "new manufacturing establishment or [any] addition to an existing manufacturing establishment"); Ore. Rev. Stat. §285.597 (1991) (exemption for business property in an "enterprise zone"); Va. Code Ann. §58.1–3661 (1991) (permitting any county, city, or town to exempt from its property tax "solar energy equipment, facilities or devices" and "recycling equipment, facilities, or devices"). It is within Congress' sound discretion to weigh the benefit of preserving those exemptions, on the one hand, against the benefit of protecting rail carriers from every tax scheme that favors some nonrailroad property, on the other.

We conclude that §11503, which expresses Congress' resolution of the matter, does not limit the States' discretion to exempt nonrailroad property, but not railroad property, from ad valorem property taxes of general application. We therefore reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, dissenting.

Section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act), 90 Stat. 54, as amended, 49 U. S. C. § 11503(b)(4) (subsection (b)(4)), prohibits States from imposing taxes that discriminate against railroads.[1] In my view, a state tax that fell upon railroad property, but from which comparable nonrailroad property was exempt, would clearly implicate that prohibition. The Court errs in holding that such arrangements are not even subject to challenge under subsection (b)(4).

Because subsection (b)(4) by its terms bars any tax that "discriminates" against rail carriers, it is not surprising that the Courts of Appeals have held that the provision applies to revenue measures that discriminate by imposing taxes on railroad property and exempting similar property owned by others.[2] While those courts (and the District Court and

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[1] As originally enacted, subsection (b)(4) prohibited the States from imposing "any other tax which results in discriminatory treatment of a common carrier by railroad . . . ." 4–R Act, § 306(1)(d), 90 Stat. 54. Pursuant to a recodification in 1978, the current version of subsection (b)(4) speaks of "*another tax* that discriminates against" a rail carrier. Congress specifically provided that the 1978 recodification "may not be construed as making a substantive change in the laws replaced." 92 Stat. 1466.

[2] In addition to the Ninth Circuit's decision in this case, 961 F. 2d 813, 818–820 (1992), see *Department of Revenue of Fla.* v. *Trailer Train Co.*, 830 F. 2d 1567, 1573 (CA11 1987) (provision targets "discrimination *in all its guises*" and "requires consideration of tax exemptions in determining whether there has been discriminatory treatment") (citation and internal quotation marks omitted); *Oglivie* v. *State Bd. of Equalization of N. D.*, 657 F. 2d 204, 209–210 (CA8) (history of provision demonstrates that "its purpose was to prevent tax discrimination against railroads in any form whatsoever," including exemption of nonrailroad property), cert. denied,

Court of Appeals in this case) have differed on precisely how to decide whether a wholesale exemption unlawfully "discriminates" and thus gives rise to *liability*, none has taken the position accepted by the Court today that a claim predicated on discriminatory exemptions is not *cognizable* under subsection (b)(4).

As the Court explains, *ante*, at 343, subsection (b)(4) does not contain a specific prohibition against imposing on railroads an ad valorem tax from which other property owners are exempt. That omission, of course, does not answer the question before us: whether the *tax* that Oregon has imposed "discriminates against a rail carrier" within the meaning of subsection (b)(4). A State might discriminate against a disfavored class of taxpayers in a variety of ways. The absence in the 4–R Act of a provision specifically addressing exemptions is no more significant than the absence of a provision addressing deductions, credits, methods of collecting or protesting state taxes, or penalties. Surely a state tax law that allowed a substantial tax deduction for all taxpayers except rail carriers would readily be recognized as discriminatory. That conclusion would not be affected by the fact that the antidiscrimination statute does not speak specifically to deductions. Indeed, the Court suggests that an exemption for all taxpayers except rail carriers would make the tax discriminatory. See *ante*, at 346.

Rather than addressing every means that might be devised to accord discriminatory tax treatment to rail carriers, Congress specified two familiar methods (differential rates and assessments) and then included a general provision de-

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454 U. S. 1086 (1981). Only the Virginia Supreme Court has reached the contrary conclusion, see *Richmond, F. & P. R. Co.* v. *State Corporation Comm'n*, 230 Va. 260, 262, 336 S. E. 2d 896, 897 (1985), and it did so on a basis that I do not understand the Court to accept today—that because ad valorem property taxes are treated in the first three subsections, an ad valorem property tax may never be attacked as discriminatory under subsection (b)(4).

signed to block other routes to the same end. In my opinion, it is anomalous to read § 11503(b) to prohibit even minor deviations in rates or assessments, but then to allow States to put manifestly disproportionate tax burdens on railroads by exempting most comparable property. Both the text of subsection (b)(4) and its evident purposes convince me that Congress intended to bar discrimination by any means, including exemptions.

In *Davis* v. *Michigan Dept. of Treasury,* 489 U. S. 803 (1989), this Court held that a State's exemption of a limited class of residents violated a general statutory prohibition against discriminatory taxation (4 U. S. C. § 111) that made no specific reference to exemptions. While I disagreed with the Court's conclusion that the limited exemption at issue could fairly be characterized as discrimination against the protected class, *Davis* surely demonstrates that an exemption, even if not expressly prohibited, may support the conclusion that a tax is discriminatory. Indeed, tax exemptions may make a tax unconstitutionally discriminatory. See, *e. g., Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263, 273 (1984); *Armco Inc.* v. *Hardesty,* 467 U. S. 638, 642–646 (1984). I see no reason why they should be totally ignored when Congress has expressly prohibited "discrimination" against a particular kind of interstate enterprise.

The Court puts great stock in the difference between the specific and strict bar against discriminatory tax rates and assessments in subsections (b)(1)–(3) and the open-ended language of subsection (b)(4), which speaks only tersely of "discriminat[ion]." As the Court explains, the definition of "commercial and industrial property" that is applicable to subsections (b)(1)–(3) is best read to embrace only property that is taxed, rather than exempted. If we were to accept the Carlines' position, the Court reasons, subsection (b)(4) would render the earlier provisions redundant and would "nullify" the limitations Congress placed on the rate and assessment provisions. *Ante,* at 343. I disagree.

The ban on discriminatory rates and assessments targets two patent and historically common forms of discrimination. In order to find discrimination in rates or assessment ratios, a court need only compare the rates and assessments applicable to railroads to the rates and assessments of other owners of comparable property. That inquiry would be complicated indeed if the courts were required to divine the "rates" and "assessments" governing property that is exempt from tax. It is not surprising, then, that the strict bars against disparate rates and assessments exclude from the comparison class property that is not taxed at all.

Congress' exclusion of exempted property from the comparison class for purposes of subsections (b)(1)–(3) does not determine the scope of subsection (b)(4), for that provision does not depend on the limited definition of "commercial and industrial property" that governs its neighbors. Reading subsection (b)(4) to require judicial scrutiny of state exemption schemes creates no disharmony with subsections (b)(1)–(3) unless one assumes that the test of "discrimination" under subsection (b)(4), like the *per se* rules against differential rates and assessments, prohibits all but the most minor differentials in tax treatment between railroad property and owners of similar property. That assumption is unwarranted.

The statute before the Court today (like the statute it construed in *Davis*) does not contain a definition of the term "discrimination," but that familiar concept and the policies of the 4–R Act provide guidance. Like the statute at issue in *Davis*, the 4–R Act protects taxpayers who often have little voice in the policy decisions of the taxing State, and whose situation makes them likely targets for unfavorable treatment.[3] The prohibition of discrimination should be read to give effect to those concerns, but it need not be read more broadly. A sensible test for prohibited discrimination—focusing on whether the protected class is being treated substantially less favorably than most similarly situated persons—would leave the States room to employ exemptions without falling afoul of subsection (b)(4).

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[3] Railroads' high rates of fixed investment and their immobile assets leave them less able than other interstate enterprises to restrain state taxation by threatening to pull up their stakes and leave. See *Burlington Northern R. Co.* v. *Superior*, 932 F. 2d 1185, 1186 (CA7 1991).

As *amicus* the Solicitor General suggests, a discrimination standard allows the States to impose disparate tax burdens when the disparity is supported by some legitimate difference between the exempted nonrailroad property and the taxed railroad property.[4] In my view, an exemption for a small minority of the resident taxpayers would not warrant a conclusion that prohibited "discrimination" has occurred. See *Davis*, 489 U. S., at 819–823 (STEVENS, J., dissenting). Because subsection (b)(4) merely protects railroads from discrimination, rather than conferring on them a right to be treated like the most favorably treated taxpayer, a violation would not be established when the tax paid on railroad property is not materially greater than the tax imposed on most comparable property.[5] But surely a tax imposed on rail carriers is not saved from discrimination merely because some other kind of enterprise (*e. g.*, motor carriers) is also subject to taxation.

The evident purpose of this part of the 4–R Act, as the Court recognizes, is to protect a class of interstate enterprises that has traditionally been subject to disproportionately heavy state and local tax burdens. This is an area in which state authority has always been circumscribed, most prominently by the Commerce Clause itself. Subsection (b)(4) plainly requires States to readjust their tax arrangements to the extent those arrangements "discriminat[e]." I cannot agree that federalism "compels" us to read subsection (b)(4) as inapplicable to exemption arrangements. See *ante*, at 345.

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[4] A State might, for example, be able to defend an exemption by showing that the exempted class was subject to an equivalent tax to which railroads were not.

[5] For similar reasons, the Court of Appeals erred when it held that the remedy for a discriminatory exemption scheme is a refund of the *entire tax* paid by the railroad. See 961 F. 2d, at 823. To remedy unlawful discrimination under subsection (b)(4), a State need refund only the difference between the tax collected from the railroad and the average tax imposed on owners of comparable property.

Federalism concerns would weigh more heavily in favor of Oregon's position if, as the Court suggests, *ante*, at 344–345, reading subsection (b)(4) to apply to exemption schemes would require States to choose between exempting railroads or eliminating tax exemptions across the board. But as I have explained, such a reading is by no means required. Because the statutory term "discrimination" permits the States greater flexibility to employ exemptions than do the bans on disparate rates and assessments, the Court's concerns about imposing onerous choices on States are overstated.[6] Moreover, an exemption that is meaningfully available to railroads—as in the Court's example of an exemption for funds spent on environmental cleanup—would not make a tax "discriminatory" merely because the exemption may be more useful for some other businesses than it is for railroads. Cf. *Burlington Northern R. Co.* v. *Superior*, 932 F. 2d 1185, 1187 (CA7 1991) (invalidating tax "imposed on an activity in which only a railroad or railroads engage").

The Court appears to hedge against its position that subsection (b)(4) flatly does not apply to taxes and exemption schemes that operate to burden railroads disproportionately. Thus, the Court intimates that the state ad valorem tax must, in order to escape scrutiny under subsection (b)(4), be "generally applicable," *ante*, at 335, 340, and that a scheme that taxed railroad property but exempted *all* nonrailroad property might be unlawful because it would not be a bona fide "exemption." See *ante*, at 346–347. If I were convinced that Oregon's ad valorem property taxes were generally applicable, I would agree with the Court's disposition of this case. The narrowness or breadth of the exemptions, and correspondingly the evenhanded or discriminatory nature of the tax on railroads, goes to whether a subsection (b)(4) claim has merit, not to whether it is cognizable. The statute provides no basis for prohibiting the exemption of 100 percent of nonrailroad property but allowing the exemption of, for example, 90 percent.

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[6] The cases in which exemption schemes have been found unlawful under subsection (b)(4) certainly do not suggest any undue incursions into state fiscal policy. See, *e. g.*, *Trailer Train Co.* v. *Leuenberger*, 885 F. 2d 415, 416 (CA8 1988) (violation found because State imposed ad valorem tax on railroad personal property but exempted over 75 percent of comparable property), cert. denied, 490 U. S. 1066 (1989); *Burlington Northern R. Co.* v. *Bair*, 766 F. 2d 1222, 1223–1224 (CA8 1985) (tax on railroad personal property coupled with exemption for 95 percent of other personal property violated statute).

I recognize that application of the statutory "discrimination" standard will sometimes involve problems of line drawing, and that discriminatory exemptions raise special difficulties. But, in my view, the statute requires courts to grapple with those difficulties. I would remand the case to the Court of Appeals to give it an opportunity to resolve the parties' disputes about the extent of any disparate burdens imposed on rail carriers by Oregon's ad valorem tax and to review the discrimination issue in accordance with the considerations set forth in this opinion.

Accordingly, I respectfully dissent.

NORTHWEST AIRLINES, INC., ET AL. *v.* COUNTY OF KENT, MICHIGAN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 92–97. Argued November 29, 1993—Decided January 24, 1994

Respondents, the owner and operators of Michigan's Kent County International Airport (collectively, the Airport), collect rent and fees from three groups of Airport users: commercial airlines, including petitioners (Airlines); general aviation; and concessionaires such as car rental agencies and gift shops. The Airport allocates its air-operations costs—*e. g.*, maintaining runways—to the Airlines and general aviation in proportion to their airfield use, and its terminal maintenance costs to the Airlines and concessions in proportion to each tenant's square footage. It charges the Airlines 100% of their allocated costs, but general aviation only 20% of its costs. The concessions' rates substantially exceed their allocated costs, yielding a sizable surplus that offsets the general aviation shortfall and has swelled the Airport's reserve fund by more than $1 million per year. After the County Board of Aeronautics unilaterally increased the Airlines' fees, they challenged the new rates, attacking (1) the Airport's failure to allocate any airfield costs to the concessions, (2) the surplus generated by the fee structure, and (3) the Airport's failure to charge general aviation 100% of its allocated costs. They alleged that these features made the fees unreasonable and thus unlawful under the Anti-Head Tax Act (AHTA)—which prohibits States and their subdivisions from collecting user fees, 49 U. S. C. App. § 1513(a), other than "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities," § 1513(b)—and under the Airport and Airway Improvement Act of 1982 (AAIA). The Airlines also asserted that the Airport's treatment of general aviation discriminates against interstate commerce in favor of primarily local traffic, in violation of the Commerce Clause. The District Court held, *inter alia*, that the Airlines have an implied right of action under the AHTA, but not the AAIA, and no cause of action under the Commerce Clause, and that the challenged fees are not unreasonable under the AHTA. The Court of Appeals affirmed in principal part, but held that the Airport had misallocated fees for the cost of providing "crash, fire, and rescue" (CFR) services.

Held:

1. The Court declines to decide whether there is a private right of action under the AHTA but assumes, for purposes of this case, that the right exists. A prevailing party may defend a judgment on any ground properly raised below, without filing a cross-petition, so long as that party seeks to preserve, and not to change, the judgment. The Airport did not cross-petition on the CFR issue it lost below, and resolving the private right of action issue in its favor would alter that portion of the judgment. Pp. 364–365.

2. The Airport's fees have not been shown to be unreasonable under the AHTA. Pp. 365–373.

(a) The AHTA sets no standards for determining a fee's reasonableness. In the absence of guidance from the Secretary of Transportation, the Court adopts the parties' suggestion to resolve the reasonableness issue using the standards stated in *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Airlines, Inc.*, 405 U. S. 707, for determining reasonableness under the Commerce Clause. Although Congress enacted the AHTA because it found unsatisfactory the end result in *Evansville*—the validation of "head" taxes—§ 1513(b) permits "reasonable" charges and the *Evansville* formulation has been used to determine "reasonableness" in related contexts, see, *e. g., American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266, 289–290. Thus, the levy here is reasonable if it (1) is based on some fair approximation of the facilities' use, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce. *Evansville, supra*, at 716–717. Pp. 365–369.

(b) The Airport's decision to allocate air-operations costs to the Airlines and general aviation, but not to the concessions, appears to "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed." *Evansville*, 405 U. S., at 716–717. While those operations generate the concessions' customer flow and, thus, benefit the concessions, only the Airlines and general aviation actually use the runways and navigational facilities. Accepting the District Court's finding that the Airlines were charged only the break-even costs, the Court concludes that the fees in question were not "excessive in comparison with the governmental benefit conferred." *Id.*, at 717. Nor is the Airport's methodology unlawful because it generates large surpluses. Since § 1513(b) applies only to fees charged to "aircraft operators," it does not authorize judicial inquiry focused on the surplus generated from the concessions' fees. The Court rejects the Airlines' argument that it should take into account concession revenues, as the Seventh Circuit did in a 1984 decision, when deciding whether the Airlines' fees are reasonable. The Seventh Circuit overlooked the Department of

Transportation's regulatory authority regarding the federal aviation laws. In view of the Department's authority, there is no cause for courts to offer a substitute for conventional public utility regulation. While the AAIA directly addresses the use of airport revenues, the Airlines do not suggest that the Airport has misused the funds in violation of that Act and did not seek review of the lower courts' ruling that they had no AAIA cause of action. Finally, the record in this case does not support the Airlines' argument that the lower general aviation fees discriminate against interstate commerce and travel. There is no proof that the large and diverse general aviation population served by the Airport travels typically intrastate and seldom ventures beyond Michigan's borders. Pp. 369–373.

3. The fees do not violate the "dormant" Commerce Clause. Even if the AHTA's express permission for States' imposition of reasonable fees were insufficiently clear to rule out dormant Commerce Clause analysis, the Court has already found the challenged fees reasonable under the AHTA using a standard taken directly from the Court's dormant Commerce Clause jurisprudence. Pp. 373–374.

955 F. 2d 1054, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 374. BLACKMUN, J., took no part in the consideration or decision of the case.

Walter A. Smith, Jr., argued the cause for petitioners. With him on the briefs was *Jonathan S. Franklin*.

William F. Hunting, Jr., argued the cause for respondents. With him on the brief were *Mark S. Allard*, *Robert A. Buchanan*, and *Michael M. Conway*.

Edward C. DuMont argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Wallace*, *William Kanter*, *Christine N. Kohl*, *Paul M. Geier*, and *Dale C. Andrews*.*

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*Briefs of *amici curiae* urging reversal were filed for the Air Transport Association of America by *Mary E. Downs;* for Thrifty Rent-A-Car System, Inc., by *Randall J. Holder* and *Nancy Glisan Gourley;* and for the

JUSTICE GINSBURG delivered the opinion of the Court.

Seven commercial airlines, petitioners in this case, assert that certain airport user fees charged to them are unreasonable and discriminatory, in violation of the federal Anti-Head Tax Act (AHTA), 49 U. S. C. App. § 1513, and the Commerce Clause. Because the record, as it now stands, does not warrant a judicial determination that the fees in question are unreasonable or unlawfully discriminatory, we affirm the judgment of the Court of Appeals.

I

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The user fees contested in this case are charged by the Kent County International Airport in Grand Rapids, Michigan. The Airport is owned by respondent Kent County and operated by respondents Kent County Board of Aeronautics and Kent County Department of Aeronautics (collectively,

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American Trucking Associations, Inc., by *Andrew L. Frey, Andrew J. Pincus, Daniel R. Barney,* and *Robert Digges, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the State of New Hampshire et al. by *Jeffrey R. Howard,* Attorney General of New Hampshire, and *Monica A. Ciolfi,* Assistant Attorney General, *Grant Woods,* Attorney General of Arizona, *Daniel E. Lungren,* Attorney General of California, *Robert A. Butterworth,* Attorney General of Florida, *Bonnie J. Campbell,* Attorney General of Iowa, *Michael E. Carpenter,* Attorney General of Maine, *Frank J. Kelley,* Attorney General of Michigan, *Joseph P. Mazurek,* Attorney General of Montana, *Frederick P. DeVesa,* Acting Attorney General of New Jersey, *Heidi Heitkamp,* Attorney General of North Dakota, *Mark Barnett,* Attorney General of South Dakota, and *James E. Doyle,* Attorney General of Wisconsin; for the City of Los Angeles by *James K. Hahn, Gary R. Netzer, Breton K. Lobner, Steven S. Rosenthal,* and *Anthony L. Press;* for the Aircraft Owners and Pilots Association by *John S. Yodice;* for the Airports Council International-North America by *Patricia A. Hahn;* for the American Association of Airport Executives by *Scott P. Lewis;* for the National Business Aircraft Association, Inc., et al. by *Raymond J. Rasenberger;* and for the U. S. Conference of Mayors et al. by *Richard Ruda.*

the Airport). Petitioners are seven commercial airlines serving the Airport (the Airlines).

The Airport collects rent and fees from three groups of users: (1) commercial airlines, including petitioners; (2) "general aviation," *i. e.*, corporate and privately owned aircraft not used for commercial, passenger, cargo, or military service; and (3) nonaeronautical concessionaires, including car rental agencies, the parking lot, restaurants, gift shops, "rent-a-cart" facilities, and other small vendors. Since 1968, the Airport has allocated its costs and set charges to aircraft operators pursuant to a "cost of service" accounting system known as the "Buckley methodology."[1] This system is designed to charge the Airlines only for the cost of providing the particular facilities and services they use.[2]

Under its accounting system, the Airport first determines the costs of operating the airfield and the passenger terminal, and allocates these costs among the users of the facilities. Costs associated with airfield operations (*e. g.*, maintaining the runways and navigational facilities) are allocated to the Airlines and general aviation in proportion to their use of the airfield. No portion of these costs is allocated to the concessions. Costs associated with maintaining the airport terminal are allocated among the terminal tenants—the Airlines and the concessions—in proportion to each tenant's square footage.[3]

The Airport then establishes fees and rates for each user group. It charges the Airlines 100% of the costs allocated to them, in the form of aircraft landing and parking fees (for use of the airfield), and rent (for the terminal space the Airlines occupy).[4] General aviation, however, is charged at a lower rate. The Airport recovers from that user group a per gallon fuel flowage fee for local aircraft and a landing fee for aircraft based elsewhere. These fees account for only 20% of the airfield costs allocated to general aviation.

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[1] See James C. Buckley, Rental Fee Recommendations (Feb. 1969), App. 223–275.

[2] In contrast, "residual cost" accounting systems base rates and fees on the total cost of operating the airport. See Brief for City of Los Angeles as *Amicus Curiae* 5.

[3] The parking lot is owned and operated by the Airport itself and is not material to this dispute.

In relation to costs, the Airport thus "undercharges" general aviation. At the same time, measured by allocated costs, the Airport vastly "overcharges" the concessions. The Airlines pay a cost-based per square foot rate for their terminal space. The concessions, however, pay market rates for their space.[5] Market rates substantially exceed the concessions' allocated costs and yield a sizable surplus.[6] The surplus offsets the general aviation shortfall of approximately $525,000 per year, and has swelled the Airport's reserve fund by more than $1 million per year.

B

Using the "Buckley methodology" just described, the Airlines and the Airport periodically negotiated and agreed upon fees to be charged through December 31, 1986. Following a new rate study made in 1986, the Airport proposed increased fees beginning January 1, 1987. App. 193 (Plaintiffs' Exh. 6). The Airlines objected to the higher fees and failed to reach an agreement with the Airport. Ultimately, the County Board of Aeronautics adopted an ordinance unilaterally increasing the fees.[7] On the effective date of the ordinance, April 1, 1988, the Airlines sued the Airport, primarily challenging post-December 31, 1986, rates. The Airlines attacked (1) the Airport's failure to allocate to the concessions a portion of the airfield costs, (2) the surplus generated by the Airport's fee structure, and (3) the Airport's failure to charge general aviation 100% of its allocated airfield costs. These features, the Airlines alleged, made the fees imposed on them unreasonable and thus unlawful under the AHTA, as added, 87 Stat. 90, and as amended, 49 U. S. C. App. § 1513, and the Airport and Airway Improvement Act of 1982 (AAIA), 96 Stat. 686, as amended, 49 U. S. C. App. § 2210. The Airlines also asserted that the Airport's treatment of general aviation discriminates against interstate commerce in favor of primarily local traffic, in violation of the Commerce Clause, U. S. Const., Art. I, § 8, cl. 3.

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[4] The Airlines are also charged for the cost of providing "crash, fire, and rescue" services, and amortization fees for assets acquired by the Airport.

[5] Most concessions pay 10% of their gross receipts as rent for space.

[6] For example, the Airport's annual net revenues from 1987 to 1989 ranged from approximately $1.6 million to $1.9 million. App. 278–279 (Plaintiffs' Exhs. 301 and 355).

[7] The ordinance increased aircraft landing fees by $.20 per thousand pounds, and increased terminal rent charges by $6.67 per square foot for prime heated and air-conditioned space, $.59 per square foot for nonprime air-conditioned space, and $1.84 per square foot for nonprime, heated, non-air-conditioned space. The ordinance also decreased aircraft parking fees by $.12 per thousand pounds. 738 F. Supp. 1112, 1115 (WD Mich. 1990).

The parties filed cross-motions for summary judgment. In the first of three opinions, the District Court denied the motions, holding that the Airport's cost methodology is not *per se* unreasonable. App. to Pet. for Cert. 57. In its second opinion, the District Court held that the Airlines have an implied right of action to challenge the fees under the AHTA but not under the AAIA, and that the Airlines have no cause of action under the Commerce Clause. *Id.*, at 42–46. Following a bench trial, the District Court issued its third and final opinion, concluding that the challenged fees are not unreasonable under the AHTA. 738 F. Supp. 1112 (WD Mich. 1990).

The Court of Appeals for the Sixth Circuit affirmed the District Court's judgment in principal part. 955 F. 2d 1054 (1992). In accord with the District Court, the Court of Appeals held that the AHTA impliedly confers a private right of action on the Airlines, but the AAIA does not. *Id.*, at 1058. On the merits, the Court of Appeals (1) upheld as reasonable under the AHTA the bulk of the charges that the Airport imposes on the Airlines, and (2) rejected the Airlines' dormant Commerce Clause claim on the ground that the AHTA regulates the area. *Id.*, at 1060–1064.

On one matter, however, the Court of Appeals reversed the District Court's judgment and remanded the case. The District Court had upheld as reasonable under the AHTA the Airport's decision to allocate to the Airlines 100% of the costs of providing "crash, fire, and rescue" (CFR) services. 738 F. Supp., at 1119. Emphasizing that the CFR facilities service all aircraft, not just the Airlines, the Court of Appeals held that the Airport must allocate CFR costs between the Airlines and general aviation. 955 F. 2d, at 1062–1063, 1064.

Petitioning for this Court's review, the Airlines challenged the Court of Appeals' adverse rulings on the AHTA and Commerce Clause issues. The Airport did not cross-petition for review of the Sixth Circuit's judgment to the extent that it favored the Airlines; specifically, the Airport did not petition for review of the remand to the District Court for allocation of the costs of CFR services between the Airlines and general aviation. We granted certiorari, 508 U. S. 959 (1993), to resolve a conflict between the decision under review and a decision of the Court of Appeals for the Seventh Circuit, *Indianapolis Airport Authority* v. *American Airlines, Inc.*, 733 F. 2d 1262 (1984), which declared key parts of a similar fee structure unreasonable under the AHTA.

II

A

In *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Airlines, Inc.*, 405 U. S. 707 (1972), this Court held that the Commerce Clause does not prohibit States or municipalities from charging commercial airlines a "head tax" on passengers boarding flights at airports within the jurisdiction, to defray the costs of airport construction and maintenance. We stated in *Evansville:* "At least so long as the toll is based on some fair approximation of use or privilege for use, . . . and is neither discriminatory against interstate commerce nor excessive in comparison with the governmental benefit conferred, it will pass constitutional muster, even though some other formula might reflect more exactly the relative use of the state facilities by individual users." *Id.*, at 716–717.

Concerned that our decision in *Evansville* might prompt a proliferation of local taxes burdensome to interstate air transportation, Congress enacted the AHTA. See *Aloha Airlines, Inc.* v. *Director of Taxation of Haw.*, 464 U. S. 7, 9–10 (1983) (summarizing history of AHTA's enactment); S. Rep. No. 93–12, p. 4 (1973) (Congress intended AHTA to "ensure . . . that local 'head' taxes will not be permitted to inhibit the flow of interstate commerce."); *id.*, at 17 ("The head tax . . . cuts against the grain of the traditional American right to travel among the States.").

The AHTA provides in pertinent part:

> "(a) Prohibition; exemption
>
> "No State (or political subdivision thereof . . .) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom . . . .
>
> "(b) Permissible State taxes and fees
>
> "[N]othing in this section shall prohibit a State (or political subdivision thereof . . .) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof . . .) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other

> service charges from aircraft operators for the use of airport facilities." 49 U. S. C. App. § 1513.

Primarily, the Airlines urge that the Airport's fees overcharge them in violation of the AHTA. Before reaching that issue, however, we face a threshold question. The United States as *amicus curiae* and, less strenuously, the Airport, urge that the Airlines have no right to enforce the AHTA through a private action commenced in a federal court of first instance. Instead, they maintain, complaints under the AHTA must be pursued initially in administrative proceedings before the Secretary of Transportation, subject to judicial review in the courts of appeals.

The threshold question is substantial: If Congress intended no right of immediate access to a federal court under the AHTA, then the Airlines' AHTA claim should have been dismissed, not adjudicated on the merits as it was, indeed in part favorably to the Airlines. However, the Airport filed no cross-petition for certiorari seeking to upset the judgment to the extent that it rejected the Airport's CFR cost allocation (100% to the Airlines) as inconsonant with the AHTA. For that reason, we decline to resolve the private right of action question in this case.

A prevailing party need not cross-petition to defend a judgment on any ground properly raised below, so long as that party seeks to preserve, and not to change, the judgment. See, *e. g., Thigpen* v. *Roberts,* 468 U. S. 27, 29–30 (1984). A cross-petition is required, however, when the respondent seeks to alter the judgment below. See, *e. g., Trans World Airlines, Inc.* v. *Thurston,* 469 U. S. 111, 119, n. 14 (1985); *United States* v. *New York Telephone Co.,* 434 U. S. 159, 166, n. 8 (1977); *Federal Energy Administration* v. *Algonquin SNG, Inc.,* 426 U. S. 548, 560, n. 11 (1976); *United States* v. *ITT Continental Baking Co.,* 420 U. S. 223, 226–227, n. 2 (1975). Alteration would be in order if the private right of action question were resolved in favor of the Airport. For then, the entire judgment would be undone, including the portion remanding for reallocation of CFR costs between the Airlines and general aviation. The Airport's failure to file a cross-petition on the CFR issue—the issue on which it was a judgment *loser*—thus leads us to resist the plea to declare the AHTA claim unfit for District Court adjudication.[8]

The question whether a federal statute creates a claim for relief is not jurisdictional. See *Air Courier Conference* v. *Postal Workers,* 498 U. S. 517, 523, n. 3 (1991); *Burks* v. *Lasker,* 441 U. S. 471, 476, n. 5 (1979); *Mt. Healthy City Bd. of Ed.* v. *Doyle,* 429 U. S. 274, 278–279 (1977); *Bell* v. *Hood,* 327 U. S. 678, 682 (1946). Accordingly, we shall assume, solely for purposes of this case, that the alleged AHTA private right of action exists.

B

The AHTA prohibits States and their subdivisions from levying a "fee" or "other charge" "directly or indirectly" on "persons traveling in air commerce or on the carriage of persons traveling in air commerce." 49 U. S. C. § 1513(a). Landing fees, terminal charges, and other airport user fees of the sort here challenged fit § 1513(a)'s description. As we confirmed in an opinion invalidating a state tax on airlines' gross receipts, § 1513(a)'s compass is not limited to direct "head" taxes. *Aloha Airlines,* 464 U. S., at 12–13.

But § 1513(a) does not stand alone. That subsection's prohibition is immediately modified by § 1513(b)'s permission. See *Wardair Canada Inc.* v. *Florida Dept. of Revenue,* 477

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[8] *Berkemer* v. *McCarty,* 468 U. S. 420, 435, n. 23 (1984), is not to the contrary. There the Court of Appeals had reversed the respondent's criminal conviction, holding postarrest incriminating statements inadmissible under *Miranda* v. *Arizona,* 384 U. S. 436 (1966). Because he prevailed in the Court of Appeals, obtaining a judgment entirely in his favor, respondent could not have filed a cross-petition. Accordingly, his contention that certain prearrest statements (whose admissibility the Court of Appeals had left ambiguous) were inadmissible was a permissible argument in defense of the judgment below.

U. S. 1, 15–16 (1986) (Burger, C. J., concurring in part and concurring in judgment) (§ 1513(b)'s saving clause was enacted in response to the States' concern that § 1513(a)'s "sweeping provision would prohibit even unobjectionable taxes such as landing fees . . ."). Sections 1513(a) and (b) together instruct that airport user fees are permissible only if, and to the extent that, they fall within § 1513(b)'s saving clause, which removes from § 1513(a)'s ban "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities."[9]

While § 1513(b) allows only "*reasonable* rental charges, landing fees, and other service charges," the AHTA does not set standards for assessing reasonableness. Courts, we recognize, are scarcely equipped to oversee, without the initial superintendence of a regulatory agency, rate structures and practices. See *Colorado Interstate Gas Co.* v. *FPC,* 324 U. S. 581, 589 (1945) ("Rate-making is essentially a legislative function."); cf. *Far East Conference* v. *United States,* 342 U. S. 570, 574 (1952) ("in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over").[10] The Secretary of Transportation is charged with administering the federal aviation laws, including the AHTA.[11] His Department is equipped, as courts are not, to survey the field nationwide, and to regulate based on a full view of the relevant facts and circumstances. If we had the benefit of the Secretary's reasoned decision concerning the AHTA's permission for the charges in question, we would accord that decision substantial deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984). Lacking guidance from the Secretary, however, and compelled to give effect to the statute's use of "reasonable," we must look elsewhere.

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[9] The Airport's argument, accepted by the dissent, that user fees are entirely outside the scope of the AHTA because they are not "head" taxes, advances an untenable reading of the statute. We note, in this regard, § 1513(b)'s recognition, in its first clause, of "taxes *other than those enumerated in subsection (a) of this section,* including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services" (emphasis added). Unlike the property and income taxes listed in the first clause of § 1513(b), the airport user fees listed in § 1513(b)'s second clause are *not* described as taxes "other than those enumerated in subsection (a)." The statute, in sum, is hardly ambiguous on this matter: User fees are covered by § 1513(a), but may be saved by § 1513(b).

[10] The reasonableness of the Airport's rates might have been referred, prior to any court's consideration, to the Department of Transportation under the primary jurisdiction doctrine. That doctrine is "specifically ap-

The parties point to the standards this Court employs to measure the reasonableness of fees under the Commerce Clause, as stated in the *Evansville* case, see *supra*, at 362–363; they invite our use of the *Evansville* standards as baselines for determining the reasonableness of fees under the

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plicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency" and permits courts to make a "'referral' to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling." *Reiter* v. *Cooper*, 507 U. S. 258, 268 (1993). However, as the parties have not briefed or argued this question, we decline to invoke the doctrine here.

[11] The Federal Aviation Act, which encompasses the AHTA, authorizes the Secretary of Transportation to conduct investigations, issue orders, and promulgate regulations necessary to implement the statute. See 49 U. S. C. App. § 1354(a). The Act provides a mechanism for administrative adjudication, subject to judicial review in the courts of appeals, of alleged violations. See § 1482(a) ("[a]ny person may file with the Secretary of Transportation . . . a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of [the Act], or of any requirement established pursuant thereto"); § 1486 (judicial review provision). The Secretary has established procedures for adjudicating such complaints through the Federal Aviation Administration, see 14 CFR pt. 13 (1993), and the FAA has entertained challenges to the reasonableness of airport landing fees under the AHTA. See *New England Legal Foundation* v. *Massachusetts Port Authority*, 883 F. 2d 157, 159–166 (CA1 1989).

AHTA.[12] We accept the parties' suggestions. Although Congress enacted the AHTA because it found unsatisfactory the end result of our Commerce Clause analysis in *Evansville*—the validation of "head" taxes—Congress specifically permitted, through § 1513(b)'s saving clause, "reasonable rental charges, landing fees, and other services charges."[13] The formulation in *Evansville* has been used to determine "reasonableness" in related contexts. See, *e. g., American Trucking Assns., Inc.* v. *Scheiner,* 483 U. S. 266, 289–290 (1987) (applying *Evansville* test to assess validity under Commerce Clause of state taxes applied to interstate motor carrier); *Massachusetts* v. *United States,* 435 U. S. 444, 466–467 (1978) (applying *Evansville* test to determine constitutionality of tax under intergovernmental immunity doctrine). It will suffice for the purpose at hand.[14]

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[12] See Brief for Petitioners 20, 22–23; Reply Brief for Petitioners 3–4; Brief for Respondents 32; see also Brief for United States as *Amicus Curiae* 23–29 (arguing that *Evansville* reasonableness test is satisfied without explicitly endorsing its application).

[13] Contrary to the dissent's suggestion, applying *Evansville*'s standards to determine whether airport fees are "reasonable" under § 1513(b) would not permit airports to "impos[e] a modest per passenger fee on airlines as a service charge for use of airport facilities." *Post,* at 380. Section 1513(a)'s prohibition is written broadly, whereas § 1513(b) is narrow, saving only "reasonable rental charges, landing fees, and other service charges." A per passenger service charge would be an impermissible "head charge" under § 1513(a), and does not fit into any of the three categories saved by § 1513(b). The user fees challenged here, by contrast, are "rental charges, landing fees, and other service charges," § 1513(b), that would be prohibited as "fee[s]" or "other charge[s]" under § 1513(a), unless they are "reasonable." See *supra,* at 365–366.

[14] It remains open to the Secretary, utilizing his Department's capacity to comprehend the details of airport operations across the country, and the economics of the air transportation industry, to apply some other formula (including one that entails more rigorous scrutiny) for determining whether fees are "reasonable" within the meaning of the AHTA; his exposition will merit judicial approbation so long as it represents "a permissible construction of the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842–845 (1984).

To recapitulate, a levy is reasonable under *Evansville* if it (1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce. 405 U. S., at 716–717. The Airlines contend that the Airport's fee structure fails the *Evansville* test on three main counts. We consider each contention in turn.

1

As noted above, the Airport allocates its air-operations costs between the Airlines and general aviation; the concessions in fact supply the lion's share of the Airport's revenues, see *supra,* at 360, but are allocated none of these costs. The Airlines contend that the concessions benefit substantially, albeit indirectly, from air operations, because those operations generate the concessions' customer flow. Therefore, the Airlines urge, the Airport's failure to allocate to the concessions any of the airfield-associated costs violates *Evansville's* requirement that user fees be "based on some fair approximation of use or privilege for use." 405 U. S., at 716–717. The cost reallocation sought by the Airlines would not change the market-based rent paid by the concessions, see *supra,* at 360, but it would lower the charges imposed on the Airlines.

We see no obvious conflict with *Evansville* in the Airport's allocation of the costs of air operations to the Airlines and general aviation, but not to the concessions. Only the Airlines and general aviation actually use the runways and navigational facilities of the Airport; the concessions use only the terminal facilities. The Airport's decision to allocate costs according to a formula that accounts for this distinction appears to "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed." 405 U. S., at 716–717.[15]

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[15] See also 405 U. S., at 718–719 (airports may lawfully distinguish among classes of users, including aircraft operators and concessions, based on their differing uses of airport facilities); *Denver* v. *Continental Air Lines,*

The District Court found that (with one minor exception[16]) the Airport charged the Airlines "the break-even costs for the areas they use." 738 F. Supp., at 1119.[17] In this light, we cannot conclude that the Airlines were charged fees "excessive in comparison with the governmental benefit conferred." *Evansville, supra,* at 717. See also Brief for United States as *Amicus Curiae* 25 ("As long as an airport's charges to air carriers do not result in revenues that exceed by more than a reasonable margin the costs of servicing those carriers, the Secretary would normally sustain those charges as reasonable under federal law.") (citing Federal Aviation Administration, *Airport Compliance Requirements,* Order No. 5190.6A §§ 4–13, 4–14, pp. 20–22 (Oct. 2, 1989), and 14 CFR § 399.110(f) (1993)).

2

The Airlines also contend that the Airport's fee methodology is unlawful because, by imposing on the Airlines virtu-

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Inc., 712 F. Supp. 834, 838, 839 (Colo. 1989) (rejecting a similar argument, noting: "Nothing in the history and purpose of the Anti-Head Tax Act indicates that Congress intended the courts to act as a public utility commission and intervene in the setting of airport rates and charges through the adoption or rejection of any particular type of cost accounting methodology. Denver's division of costs and revenues between airlines and concessionaires is facially a reasonable approach to establishing rental charges, terminal rates, landing fees and other service charges which are collected from the users of the facilities at Stapleton [Airport].").

[16] The District Court found that the Airport overcharged the Airlines for aircraft parking and ordered the Airport "to recalculate this fee to result in a true break-even charge." 738 F. Supp., at 1120. The Airport did not appeal this order.

[17] The Airlines do not dispute that they are charged only their allocated share of the airfield and terminal costs. They assert, however, that the Airport has allocated to them excessive "carrying charges" or amortization fees for capital improvements. The Court of Appeals specifically addressed and rejected this contention, concluding that the rate charged "is reasonable and should not result in a net present value which exceeds the initial cost of the [capital improvements] project." 955 F. 2d 1054, 1063 (CA6 1992). We have no cause to disturb that determination.

ally all of the air-operations costs, and exacting fees from the concessions far in excess of their allocated costs, the methodology generates huge surpluses. The AHTA, however, does not authorize judicial inquiry focused on the amount of the Airport's surplus. The statute requires only that an airport's fees not "be excessive in relation to costs incurred by the taxing authorities" for benefits conferred on the user. *Evansville, supra,* at 719. As we have explained, the Airlines are charged only for the costs of benefits they receive. The Airport's surplus is generated from fees charged to concessions, and the amounts of those fees are not at issue. As the Court of Appeals pointed out, § 1513(b) applies only to fees charged to "aircraft operators." 955 F. 2d, at 1060.

The Airlines urge us to consider the effect of the concession revenues when deciding whether the fees charged the Airlines are reasonable, pointing to the Seventh Circuit's analysis in *Indianapolis Airport* v. *American Airlines, Inc.,* 733 F. 2d, at 1268 (invalidating the Indianapolis Airport's fee structure on the ground, *inter alia,* that the Airport's generation of a surplus from the concession fees indirectly raised the costs of air travel). The Seventh Circuit, however, overlooked a key factor. It reasoned explicitly from the incorrect premise that "[n]o agency has regulatory authority over the rate practices of the Indianapolis Airport Authority." *Ibid.* The Seventh Circuit panel believed that "the duty of regulation [fell] to the courts in the enforcement of the state and federal statutes forbidding unreasonable rates." *Ibid.* That court thought it necessary to "imagine [itself] in the role of a regulatory agency." *Ibid.* In contrast, our opinion in this case emphasizes that the Department of Transportation has regulatory authority to enforce the federal aviation laws, including the AHTA and the AAIA, see *supra,* at 366–367, and n. 11, so there is no cause for courts to offer a substitute for "conventional public utility regulation," 733 F. 2d, at 1268.

We resist inferring a limit on airport surpluses from the AHTA for a further reason. That measure does not mention surplus accumulation, but another statute, the AAIA, directly addresses the use of airport revenues. The AAIA requires that "*all* revenues generated by the airport . . . be expended for the capital or operating costs of the airport . . . ." 49 U. S. C. App. § 2210(a)(12) (emphasis supplied). The Airlines do not suggest that the Airport is using its surplus for any purpose other than Airport-related expenses, nor did they seek review of the lower courts' holding that they had no right of action under the AAIA. 955 F. 2d, at 1058–1059. For these reasons, even if the AAIA is read to impose a limit on the accumulation of surplus revenues, see Brief for United States as *Amicus Curiae* 26–27, the question whether the Airport's surpluses are excessive is not properly before us.

3

Finally, the Airlines contend that the Airport's fees discriminate against them in favor of general aviation, in violation of *Evansville*'s instruction that airport tolls be nondiscriminatory regarding interstate commerce and travel. As earlier recounted, see *supra*, at 359–360, the Airlines pay 100% of their allocated costs while general aviation users are assessed fees covering only 20% of their allocated costs.

We need not consider whether the Airlines would have a compelling point had they established that general aviation is properly categorized as intrastate commerce. Cf., *e. g.*, *Chemical Waste Management, Inc.* v. *Hunt*, 504 U. S. 334, 339–348 (1992) (invalidating state fee on hazardous wastes generated outside, but disposed of inside, the State, because it discriminated against interstate commerce); *American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S., at 268–269 (invalidating state highway use taxes because they discriminated against interstate motor carriers). The record in this case, it suffices to say, does not support the Airlines' argument. We cannot assume, in the total absence of proof, that the large and diverse general aviation population served by the Airport travels typically intrastate and seldom ventures beyond Michigan's borders.[18]

III

The Airlines assert that, even if the Airport's user fees are not unreasonable under the AHTA, they violate the "dormant" Commerce Clause. Even if we considered the AHTA's express permission for States' imposition of "reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities," 49 U. S. C. App. § 1513(b), insufficiently clear[19] to rule out judicial dormant Commerce Clause analysis,[20] petitioners' argument would fail. We have already found the challenged fees reasonable under the AHTA through the lens of *Evansville*—that is, under a reasonableness standard taken directly from our dormant Commerce Clause jurisprudence.

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[18] The Airlines suggest that they had no opportunity to develop a record demonstrating discrimination in favor of intrastate carriers, because the District Court granted summary judgment for respondents on the Commerce Clause question. See Reply Brief for Petitioners 9–10, n. 14. This argument does not fly. The case did proceed to trial on the AHTA claim. The Airlines have asserted that *Evansville*'s standard governs AHTA reasonableness. Thus, under their own theory, they had to demonstrate the equivalent of a violation of the dormant Commerce Clause—*i. e.*, discrimination against interstate commerce—in order to prevail at the AHTA trial. The Airlines' belated suggestion—which contradicts their endorsement of *Evansville*, see Brief for Petitioners 22–23—that discrimination in favor of intrastate commerce is relevant under the Commerce Clause, but not under the AHTA, is unimpressive. The AHTA was a direct response to *Evansville;* Congress' principal concern in enacting the measure was to proscribe fees that unduly burden interstate commerce. See, *e. g.*, S. Rep. No. 93–12, p. 17 (1973). Covered fees, as we have emphasized, include, but are not limited to, head taxes. See *supra*, at 365–366, and n. 9.

[19] See, *e. g.*, *Wyoming* v. *Oklahoma*, 502 U. S. 437, 458 (1992) (requiring that Congress "manifest its unambiguous intent before a federal statute will be read to permit" state regulation discriminating against interstate commerce).

[20] See, *e. g.*, *Merrion* v. *Jicarilla Apache Tribe*, 455 U. S. 130, 154 (1982) ("Once Congress acts, courts are not free to review state taxes or other regulations under the dormant Commerce Clause. When Congress has struck the balance it deems appropriate, the courts are no longer needed to prevent States from burdening commerce, and it matters not that the

* * *

For the reasons stated, and without prejudging the outcome of any eventual proceeding before or regulation by the Secretary of Transportation, we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE BLACKMUN took no part in the consideration or decision of this case.

JUSTICE THOMAS, dissenting.

Today the Court transforms a statutory prohibition on a narrow class of charges on air travel into a broad mandate for federal regulation and review of virtually all airport fees. I disagree with the Court that the landing fees, rental charges, and carrying charges challenged here fall within the scope of the Anti-Head Tax Act (AHTA or Act), 49 U. S. C. App. § 1513. Unlike the Court, I do not believe that the Act imposes a "reasonableness" requirement on all airport charges and user fees. Instead, the Act merely prohibits fees, taxes, and charges imposed on the bases specified in § 1513(a), and leaves airports free to impose other charges, subject to the restrictions of the dormant Commerce Clause. Because the Act does not apply to the fees at issue in this case, I would remand for consideration of petitioners' Commerce Clause claim. Accordingly, I respectfully dissent.

I

As the Court recognizes, *ante*, at 362–363, Congress passed the AHTA in response to this Court's decision in

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courts would invalidate the state tax or regulation under the Commerce Clause in the absence of congressional action.").

Evansville-Vanderburgh Airport Authority Dist. v. *Delta Airlines, Inc.*, 405 U. S. 707 (1972), which upheld against Commerce Clause challenge the imposition of a per capita ("head") tax on air travelers. The Act was designed primarily to deal with the proliferation of local head taxes in the wake of the *Evansville* decision. *Aloha Airlines, Inc.* v. *Director of Taxation of Haw.*, 464 U. S. 7, 9, 13 (1983).

Two AHTA provisions are relevant here. Section 1513(a) prohibits state and local governments from imposing "a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom." Section 1513(b), however, states that "nothing in [the Act]" prohibits the imposition of "taxes other than those enumerated in subsection (a)," including, among other things, property and net income taxes, and that the Act does not prohibit "reasonable rental charges, landing fees, and other service charges" collected from "aircraft operators for the use of airport facilities."

In the Court's view, § 1513(a) prohibits virtually all airport user fees, *ante*, at 365 ("Landing fees, terminal charges, and other airport user fees of the sort here challenged fit § 1513(a)'s description"), and § 1513(b) "saves" those fees that are "reasonable," *ante*, at 366, n. 9 ("[U]ser fees are covered by § 1513(a), but may be saved by § 1513(b)"). The Court supports its broad reading of § 1513(a) in part by noting that the section prohibits not only head taxes but also taxes on gross receipts. *Ante*, at 365 (citing *Aloha Airlines*, 464 U. S., at 12–13). That, however, merely states the obvious. Section 1513(a) expressly prohibits taxes "on the gross receipts derived" from the sale of air transportation. The mere fact that the Act is not strictly limited to head taxes, which were the Act's primary target, *id.*, at 13, but also encompasses taxes on gross receipts from the sale of air transportation, in no way suggests that the Act should be read to encompass all airport "user fees."

To be sure, the Act's apparently broad ban on any fees, taxes, or charges imposed "directly or *indirectly*, on persons traveling in air commerce," etc., superficially supports the Court's interpretation. Any cost an airline bears is in some sense an "indirect" charge "on persons traveling in air commerce," because the airline ultimately will pass that cost on to consumers in the form of higher ticket prices. But if § 1513(a) covers all charges indirectly imposed on air travelers, as the Court apparently believes, see *ante*, at 365, it should logically encompass all taxes imposed on airlines as well, including property taxes, net income taxes, franchise taxes, and sales and use taxes on the sale of goods and services. Yet § 1513(b) instructs that such taxes are not covered by § 1513(a)—that they are "taxes *other than those enumerated in subsection (a)*." (Emphasis added.) Significantly, § 1513(b) is not phrased as an exemption for taxes otherwise within § 1513(a)'s prohibition, but rather as a clarification of the reach of § 1513(a). It makes clear that the language of § 1513(a) defining the prohibition does not extend by its own force to the taxes enumerated in § 1513(b). Under the Court's broad construction of § 1513(a)'s "directly or indirectly" language, however, the two provisions would appear to be in conflict.

Recognizing the significance of § 1513(b)'s treatment of taxes, the Court implicitly acknowledges that § 1513(a) does not cover the taxes listed in § 1513(b). *Ante*, at 366, n. 9. But the Court can only accomplish this reading by assuming that § 1513(b) treats the "rental charges, landing fees, and other service charges . . . for the use of airport facilities" listed in that subsection differently from the enumerated taxes. In this understanding, while as to taxes § 1513(b) merely clarifies the scope of § 1513(a), as to fees it serves the altogether different function of providing an exemption from § 1513(a)'s prohibition. The Court supports this reading on the ground that § 1513(b) does not explicitly describe the fees as distinct from ("other than") the fees prohibited in § 1513(a). That construction requires a rather unlikely reading of § 1513(a), however, because it means that the same language defining the scope of the prohibition in that section inexplicably would have one meaning when applied to fees, and quite a different (and more limited) meaning when applied to taxes. None of the taxes listed in § 1513(b), although borne indirectly by airline passengers, would constitute a "tax, fee, . . . or other charge, [levied] directly or indirectly, on persons traveling in air commerce," etc. But a user fee charged to an airline, *because* it is borne indirectly by airline passengers, would constitute such a "tax, fee, . . . or other charge . . . ." Thus, the prohibition in § 1513(a) would not extend to, for example, property taxes, because they are not imposed on one of the bases listed in § 1513(a), but would extend to other fees or charges, regardless of the basis upon which they are imposed.

Adherence to the plain language of § 1513(a) avoids these problems. In my view, when the statute prohibits a tax or charge "on persons traveling in air commerce," "on the carriage of" such persons, "on the sale of air transportation," or "on the gross receipts derived therefrom," it defines the prohibition in terms of the prohibited *basis* of the tax or charge. That is, § 1513(a) prohibits the levy or collection of a tax or fee "on" certain subjects. A head tax, for example, is a charge "on persons traveling in air commerce" in that it is imposed on a per passenger basis. A landing fee, by contrast, is not—rather, it is a charge on an aircraft's landing at an airport, without regard to the number of passengers it carries.[1]

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[1] Of course, as the Court notes, *ante*, at 366, n. 9, user fees such as landing fees are not *per se* excluded from the Act. An airport could not, for example, simply replace a head tax, which is clearly forbidden by the Act, with a "landing fee" calculated according to the number of passengers on an airplane. Such a thinly disguised substitute for a head tax no doubt

Section 1513(b) confirms that § 1513(a) is concerned with the basis on which the tax or charge is calculated. Property taxes, net income taxes, and franchise taxes are not imposed on one of the bases prohibited in § 1513(a), and as explained above, are not included in § 1513(a). Because the same language in § 1513(a) restricts taxes as well as fees and other charges, it seems logical that the fees referred to in § 1513(b), which also are not generally calculated on the bases listed in § 1513(a), are similarly beyond § 1513(a)'s prohibition.

Section 1513(b)'s reference to "reasonable" charges, then, does not impose a requirement that all airport user fees be "reasonable." Instead, it simply makes clear that state and local governments remain free to impose charges other than those proscribed by § 1513(a). Cf. *Aloha Airlines,* 464 U. S., at 12, n. 6 ("Section 1513(a) pre-empts a limited number of state taxes, . . . [and] [§]1513(b) clarifies Congress' view that the States are still free to impose on airlines and air carriers 'taxes other than those enumerated in subsection (a)' "). That is not to say that the term "reasonable" is superfluous. Had the Act made unqualified reference to landing fees and other user fees, it might have been read as an indication of congressional intent to authorize fees or charges that would otherwise be invalid under the dormant Commerce Clause. See *Maine* v. *Taylor,* 477 U. S. 131, 139 (1986). An unqualified reference might have also been understood to permit landing fees and other fees calculated on one of the bases prohibited by § 1513(a). See n. 1, *supra.* By including the term "reasonable," Congress ensured that the Act would not

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is a charge on the carriage of passengers traveling in air commerce within the meaning of § 1513(a). A landing fee is not such a prohibited charge where it is based merely on the weight of an airplane, as here. See App. 194 (Plaintiffs' Trial Exh. 6: Fees for the Use of Public Aircraft Facilities and Rental for Passenger Terminal Premises, Kent County International Airport, Three Years Beginning Jan. 1, 1987 (Dec. 31, 1986)). Similarly, neither a rental fee based on square footage, see *ibid.,* nor a carrying charge based on the depreciation of an asset, see App. 68–70 (trial testimony of Richard K. Dompke), is such a prohibited charge.

be understood to displace the dormant Commerce Clause or to exempt user fees on aircraft operators *per se* from § 1513(a). In short, § 1513(b) merely clarifies that fees, taxes, and other charges not encompassed within § 1513(a) may be imposed if consistent with our dormant Commerce Clause jurisprudence.[2]

II

The considerable difficulty the Court has in finding content for the term "reasonable" should signal that Congress did not intend the Act to impose a comprehensive new regulation on airport fees. As the Court admits, the Act itself sets no standards for reasonableness. *Ante,* at 366. Finding no other source for a definition, the Court uses *Evansville* as its test of reasonableness, apparently for want of anything better. See *ante,* at 367–368. The Court seems to recognize that this is not a perfect fit (but "will suffice for the purpose at hand," *ante,* at 368), and with good reason. Reasonableness was only one of several factors considered in *Evansville;* nondiscrimination against interstate commerce is a separate concern and is of at least equal importance. See 405 U. S., at 716–717. Moreover, as the Court acknowledges, Congress enacted the Act precisely because it found the result in *Evansville* "unsatisfactory." *Ante,* at 368.

Nevertheless, the Court reads the *Evansville* standard into the statute for no reason other than that the parties invite us to do so and that this Court (after enactment of the AHTA) occasionally has applied *Evansville* to test reasonableness in other contexts. *Ante,* at 367–368. That the parties agree on a standard, however, does not mean that it is the correct one. Moreover, it seems somewhat odd to import into the Act the very standard that created the problem Congress ostensibly intended the Act to "correct." Indeed, read as the Court construes it, the Act would fail to prohibit precisely the sort of fees § 1513(a) most clearly forbids. A head tax itself was held to be a "reasonable" user fee in *Evansville* (assuming, as the Court does, that *Evansville* applied a "reasonableness" standard). Under the Court's interpretation of the AHTA, there is nothing to prevent an airport from imposing a modest per passenger fee on airlines as a service charge for use of airport facilities.[3] Such a fee would pass muster under *Evansville,* and therefore would be "saved" by § 1513(b) as a "reasonable" fee, even though it is clearly a charge "on the carriage of persons traveling in air commerce." § 1513(a).[4] It is doubtful that Congress intended the AHTA to prohibit "unreasonable" landing fees, whatever they might be, while permitting "*Evansville*-reasonable" per capita user fees on aircraft operators. If, as the Court implies, Congress disapproved of the result but not the analysis in *Evansville,* it seems far more likely that it would have left the Commerce Clause analysis undisturbed while prohibiting head taxes and similar fees. In my view, that is precisely what § 1513 does.

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[2] Other statutory restrictions might also apply to the fees at issue here, see, *e. g.,* 49 U. S. C. App. § 2210, but their applicability is not before us.

Having applied a construction of "reasonable" that it admits is not compelled by the Act, the Court invites the Secretary of Transportation to devise a different, presumably better, interpretation of the term, to which the Court will defer if it is a permissible construction of the Act.[5] *Ante,* at 368, n. 14. Given that the Act sets no standards for "reasonableness," *ante,* at 366, it is difficult to imagine how the Secretary's interpretation could be an impermissible one. Indeed, although the Court seems to assume that the standard would be at least as rigorous as the one it applies here, presumably the Secretary could, in the exercise of his expertise, devise a more permissive standard. Under the Court's analysis, there is no reason to assume that the *Evansville* standard is a minimum. If the Act imposes the comprehensive regulation of the reasonableness of airport charges that the Court sees, it would certainly constitute a clear expression of Congress' intention to displace the dormant Commerce Clause in this area, see *Maine* v. *Taylor,* 477 U. S., at 139, in which case the Secretary would be free to regulate either more or less restrictively than would the dormant Commerce Clause. Cf. *Merrion* v. *Jicarilla Apache Tribe,* 455 U. S. 130, 154 (1982). I simply find nothing in the AHTA that gives the Secretary such unbridled discretion to regulate all airport user fees.

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[3] Presumably, under the Court's analysis, § 1513(b) would not save head taxes exacted directly from passengers because it refers only to user fees collected "from aircraft operators."

[4] It is no answer to say, as the Court does, *ante,* at 368, n. 13, that "head charges" are prohibited by § 1513(a). In the Court's view, "user fees are [also] covered by § 1513(a)." *Ante,* at 366, n. 9. As the Court construes the Act, charges covered by § 1513(a) are permitted only if they are "saved" by § 1513(b). *Ibid.* It is not clear why § 1513(b) would save reasonable "fee[s]" and "other charge[s]" covered by § 1513(a) but not reasonable "head charge[s]" covered by § 1513(a). Head charges certainly may constitute "reasonable . . . service charges from aircraft operators for the use of airport facilities," § 1513(b), if *Evansville* is the standard of reasonableness. See *Evansville-Vanderburgh Airport Authority Dist.* v. *Delta Airlines, Inc.*, 405 U. S. 707, 710, 714 (1972) (upholding a $1 per passenger "service charge" collected from air carriers for "use of runways and other airport facilities").

III

Because the AHTA does not, in my view, apply to the fees in this case, it does not foreclose petitioners' challenge under the dormant Commerce Clause.[6] The courts below, however, held that the Act, as they interpreted it, precluded that claim. 955 F. 2d 1054, 1063–1064 (CA6 1992); No. G88–243 CA (WD Mich., Jan. 19, 1990), App. to Pet. for Cert. 46a. Because the lower courts should be given the opportunity to consider the merits of petitioners' dormant Commerce Clause challenge in the first instance, I would remand.

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[5] The Secretary of Transportation has not so far promulgated any regulatory standards for judging reasonableness under the Act. Although that fact is not directly relevant to our inquiry, it is surprising, if the Act means what the Court thinks it does, that the Secretary has not done so in the 20 years since the AHTA's enactment.

[6] Nor, in my view, does the Airport and Airway Improvement Act of 1982 (AAIA), 49 U. S. C. App. § 2210, foreclose dormant Commerce Clause analysis here. Although the AAIA places a variety of conditions on federal funding of airports, some of which relate to user fees, it imposes no flat prohibitions, and therefore does not make "'unmistakably clear'" that it is intended to displace the dormant Commerce Clause. *Maine* v. *Taylor,* 477 U. S. 131, 139 (1986). Moreover, this Court in *Evansville* held

I therefore respectfully dissent.

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that the AAIA's predecessor, which was substantially similar to the AAIA, did not preclude dormant Commerce Clause analysis. See 405 U. S., at 721.

CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. *v.* BOHLEN

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 92–1500. Argued December 6, 1993—Decided February 23, 1994

The state trial judge sentenced respondent as a persistent offender following his conviction on three robbery counts, but the Missouri Court of Appeals reversed the sentence because there was no proof of prior convictions, as is necessary to establish persistent-offender status under state law. On remand, the trial judge resentenced respondent as a persistent offender based on evidence of prior felony convictions, rejecting his contention that allowing the State another opportunity to prove such convictions violated the Double Jeopardy Clause. In affirming, the State Court of Appeals agreed that there was no double jeopardy bar, as did the Federal District Court, which denied respondent's habeas corpus petition. However, in reversing, the Federal Court of Appeals extended the rationale of *Bullington* v. *Missouri*, 451 U. S. 430, a capital case, to hold that the Double Jeopardy Clause prohibits a State from subjecting a defendant to successive noncapital sentence enhancement proceedings. The court ruled that taking that step did not require the announcement of a "new rule" of constitutional law, and thus that granting habeas relief to respondent would not violate the nonretroactivity principle of *Teague* v. *Lane*, 489 U. S. 288, which prohibits such relief based on a rule announced after the defendant's conviction and sentence became final.

Held:

1. Because the State argued in the certiorari petition, as it had in the courts below and as it does in its brief on the merits, that the nonretroactivity principle barred the relief sought by respondent, this Court must apply *Teague* analysis before considering the merits of respondent's claim. See *Graham* v. *Collins*, 506 U. S. 461, 466–467. The *Teague* issue is a necessary predicate to the resolution of the primary question presented in the petition: whether the Double Jeopardy Clause should apply to successive noncapital sentence enhancement proceedings. Pp. 388–390.

2. The Court of Appeals erred in directing the District Court to grant respondent habeas relief because doing so required the announcement

and application of a new rule in violation of *Teague* and subsequent cases. Pp. 390–396.

(a) Under those precedents, a court must proceed in three steps: (1) it must ascertain the date on which the conviction and sentence became final for *Teague* purposes; (2) it must determine whether a state court considering the defendant's claim on that date would have felt compelled by existing precedent to conclude that the rule sought was required by the Constitution; and (3), even if it determines that the defendant seeks the benefit of a new rule, it must decide whether that rule falls within one of the two narrow exceptions to the nonretroactivity principle. P. 390.

(b) Respondent's conviction and sentence became final for purposes of retroactivity analysis on January 2, 1986, the date on which the 90-day period for filing a certiorari petition elapsed following exhaustion of the availability of direct appeal to the state courts. See *Griffith* v. *Kentucky,* 479 U. S. 314, 321, n. 6. Pp. 390–391.

(c) The Federal Court of Appeals announced a new rule in this case. A reasonable jurist reviewing this Court's precedents as of January 2, 1986, would not have considered the application of the Double Jeopardy Clause to a noncapital sentencing proceeding to be dictated by precedent. At that time, the Court had not so applied the Clause, cf., *e. g., United States* v. *DiFrancesco,* 449 U. S. 117, 133–135; *Bullington, supra,* and *Arizona* v. *Rumsey,* 467 U. S. 203, distinguished, and indeed several of the Court's decisions pointed in the opposite direction, see, *e. g., Strickland* v. *Washington,* 466 U. S. 668. Moreover, two Federal Courts of Appeals and several state courts had reached conflicting holdings on the issue. Because that conflict concerned a development in the law over which reasonable jurists could disagree, *Sawyer* v. *Smith,* 497 U. S. 227, 234, the Court of Appeals erred in resolving it in respondent's favor. To the limited extent this Court's cases decided subsequent to January 2, 1986, have any relevance to the *Teague* analysis, they are entirely consistent with the foregoing new rule determination. Pp. 391–396.

(d) Neither of the two narrow exceptions to the nonretroactivity principle applies in this case. First, imposing a double jeopardy bar here would not place respondent's conduct beyond the power of the criminal law-making authority, since he is still subject to imprisonment on each of his robbery convictions, regardless of whether he is sentenced as a persistent offender. Second, applying the Double Jeopardy Clause in these circumstances would not constitute a watershed criminal rule, since persistent-offender status is a fact objectively ascertainable on the basis of readily available evidence, and subjecting a defendant to a second proceeding at which the State has the opportunity to show the requisite number of prior convictions is not unfair and will enhance the proceeding's accuracy by ensuring that the determination is made on the basis of competent evidence. P. 396.

3. Because of the resolution of this case on *Teague* grounds, the Court need not reach the questions whether the Double Jeopardy Clause applies to noncapital sentencing, whether Missouri's persistent-offender scheme is sufficiently trial-like to invoke double jeopardy protections, or whether *Bullington* should be overruled. Pp. 396–397.

979 F. 2d 109, reversed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion, *post,* p. 397.

Frank A. Jung, Assistant Attorney General of Missouri, argued the cause for petitioners. With him on the briefs was *Jeremiah W. (Jay) Nixon,* Attorney General.

William K. Kelley argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Bryson,* and *Ronald J. Mann.*

Richard H. Sindel, by appointment of the Court, 510 U. S. 806, argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for Cook County, Illinois, by *Jack O'Malley, Renee G. Goldfarb,* and *Theodore Fotios Burtzos;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson.*

Michael D. Gooch filed a brief for the National Legal Aid and Defender Association et al. as *amici curiae* urging affirmance.

A brief of *amici curiae* was filed for the State of Arkansas et al. by *Winston Bryant,* Attorney General of Arkansas, *Clint Miller,* Senior Assistant Attorney General, and *Kyle R. Wilson,* Assistant Attorney General, *John M. Bailey,* Chief State's Attorney of Connecticut, *Charles M. Oberly III,* Attorney General of Delaware, *Larry EchoHawk,* Attorney General of Idaho, *Mike Moore,* Attorney General of Mississippi, *Joseph P. Mazurek,* Attorney General of Montana, *Don Stenberg,* Attorney General of Nebraska, *Frankie Sue Del Papa,* Attorney General of Nevada, *Carol Henderson,* Deputy Attorney General of New Jersey, *T. Travis Medlock,* Attorney General of South Carolina, and *Joseph B. Meyer,* Attorney General of Wyoming.

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Bullington* v. *Missouri*, 451 U. S. 430 (1981), we held that a defendant sentenced to life imprisonment following a trial-like capital sentencing proceeding is protected by the Double Jeopardy Clause against imposition of the death penalty if he obtains reversal of his conviction and is retried and reconvicted. In this case we are asked to decide whether the Double Jeopardy Clause prohibits a State from twice subjecting a defendant to a *noncapital* sentence enhancement proceeding.

I

Respondent and others entered a jewelry store in St. Louis County, Missouri, on April 17, 1981. Holding store employees and customers at gunpoint, they stole money and jewelry. After a jury trial, respondent was convicted on three counts of first-degree robbery. See Mo. Rev. Stat. § 569.020 (1978). The authorized punishment for that offense, a class A felony, is "a term of years not less than ten years and not to exceed thirty years, or life imprisonment." Mo. Rev. Stat. § 558.011.1(1) (Supp. 1982).

Under Missouri law, the jury is to "assess and declare the punishment as a part of [the] verdict." § 557.036.2. The judge is then to determine the punishment "having regard to the nature and circumstances of the offense and the history and character of the defendant," § 557.036.1, although the sentence imposed by the judge generally cannot be more severe than the advisory sentence recommended by the jury. § 557.036.3. If the trial judge finds the defendant to be a "persistent offender," however, the judge sets the punishment without seeking an advisory sentence from the jury. §§ 557.036.4, 557.036.5. A persistent offender is any person "who has pleaded guilty to or has been found guilty of two or more felonies committed at different times." § 558.016.3. The judge must find beyond a reasonable doubt that the defendant is a persistent offender. § 558.021. For a defendant who has committed a class A felony, a finding of persistent-offender status shifts the sentencing decision from the jury to the judge but does not alter the authorized sentencing range. §§ 557.036.4(2), 558.016.6(1).

The trial judge in this case sentenced respondent as a persistent offender to three consecutive terms of 15 years in prison. The Missouri Court of Appeals affirmed respondent's convictions. *State* v. *Bohlen*, 670 S. W. 2d 119 (1984). The state court reversed respondent's sentence, however, because "although [respondent] was sentenced by the judge as a persistent offender no proof was made of the prior convictions." *Id.*, at 123. Following Missouri practice, see *State* v. *Holt*, 660 S. W. 2d 735, 738–739 (Mo. App. 1983), the court remanded for proof of those convictions and resentencing.

On remand, the State introduced evidence of four prior felony convictions. Rejecting respondent's contention that allowing the State another opportunity to prove his prior convictions violated the Double Jeopardy Clause, the trial judge found respondent to be a persistent offender and again sentenced him to three consecutive 15-year terms. App. A–29, A–35. The Missouri Court of Appeals affirmed: "The question of double jeopardy was not involved because those provisions of the Fifth Amendment have been held not to apply to sentencing." *State* v. *Bohlen*, 698 S. W. 2d 577, 578 (1985), citing *State* v. *Lee*, 660 S. W. 2d 394, 399 (Mo. App. 1983). The Missouri Court of Appeals subsequently affirmed the trial court's denial of respondent's motion for postconviction relief. *Bohlen* v. *State*, 743 S. W. 2d 425 (1987).

In 1989, respondent filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Missouri. The District Court, adopting the report and recommendation of a Magistrate, denied the petition. App. to Pet. for Cert. A25–A26. The court rejected respondent's contention that the Double Jeopardy Clause barred the State from introducing evidence of respondent's prior convictions at the second sentencing hearing. *Id.*, at A37–A49.

The United States Court of Appeals for the Eighth Circuit reversed. 979 F. 2d 109 (1992). Based on its conclusion that "[t]he persistent offender sentenc[e] enhancement procedure in Missouri has protections similar to those in the capital sentencing hearing in *Bullington*," *id.*, at 112, the court stated that "it is a short step to apply the same double jeopardy protection to a non-capital sentencing hearing as the Supreme Court applied to a capital sentenc[ing] . . . hearing." *Id.*, at 113. The court held that taking that step did not require the announcement of a "new rule" of constitutional law, and thus that granting habeas relief to respondent would not violate the nonretroactivity principle of *Teague* v. *Lane*, 489 U. S. 288 (1989) (plurality opinion). The Court of Appeals accordingly directed the District Court to grant respondent a writ of habeas corpus. 979 F. 2d, at 115.

We granted certiorari, 508 U. S. 971 (1993), and now reverse.

II

We have consistently declined to consider issues not raised in the petition for a writ of certiorari. See this Court's Rule 14.1(a) ("Only the questions set forth in the petition, or fairly included therein, will be considered by the Court"). In *Yee* v. *Escondido*, 503 U. S. 519 (1992), for example, the question presented was whether certain governmental action had effected a *physical* taking of the petitioner's property; we held that the question whether the same action had effected a *regulatory* taking, while "related" and "complementary" to the question presented, was not fairly included therein. *Id.*, at 537. In *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.*, 510 U. S. 27 (1993) *(per curiam)*, the question presented in the petition was whether the courts of appeals should routinely vacate district court judgments when cases are settled while on appeal; we held that the "analytically and factually" distinct issue whether the petitioner was improperly denied leave to intervene in the court below was not fairly included in the question presented. *Id.*, at 32. See also *American Nat. Bank & Trust Co. of Chicago* v. *Haroco, Inc.*, 473 U. S. 606, 608 (1985) *(per curiam).*

The primary question presented in the petition for a writ of certiorari in this case was "[w]hether the Double Jeopardy Clause . . . should apply to successive non-capital sentence enhancement proceedings." Pet. for Cert. 1. The State argues that answering that question in the affirmative would require the announcement of a new rule of constitutional law in violation of *Teague* and subsequent cases. We conclude that this issue is a subsidiary question fairly included in the question presented.

The nonretroactivity principle *prevents* a federal court from granting habeas corpus relief to a state prisoner based on a rule announced after his conviction and sentence became final. See, *e. g., Stringer* v. *Black*, 503 U. S. 222, 227 (1992). A threshold question in every habeas case, therefore, is whether the court is obligated to apply the *Teague* rule to the defendant's claim. We have recognized that the nonretroactivity principle "is not 'jurisdictional' in the sense that [federal courts] . . . must raise and decide the issue *sua sponte.*" *Collins* v. *Youngblood*, 497 U. S. 37, 41 (1990) (emphasis omitted). Thus, a federal court may, but need not, decline to apply *Teague* if the State does not argue it. See *Schiro* v. *Farley*, 510 U. S. 222, 228–229 (1994). But if the State does argue that the defendant seeks the benefit of a new rule of constitutional law, the court *must* apply *Teague* before considering the merits of the claim. See *Graham* v. *Collins*, 506 U. S. 461, 466–467 (1993).

In this case, the State argued in the petition, as it had in the courts below and as it does in its brief on the merits, that the nonretroactivity principle barred the relief sought by respondent. In contrast to *Yee*, which involved a claim that was related but not subsidiary, and *Izumi*, in which the intervention question was a procedural one wholly divorced from the question on which we granted review, the *Teague* issue raised by the State in this case is a necessary predicate to the resolution of the question presented in the petition. Cf. *Cuyler* v. *Sullivan,* 446 U. S. 335, 342–343, n. 6 (1980). We therefore proceed to consider it.

III

"[A] case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Teague* v. *Lane, supra,* at 301. In determining whether a state prisoner is entitled to habeas relief, a federal court should apply *Teague* by proceeding in three steps. First, the court must ascertain the date on which the defendant's conviction and sentence became final for *Teague* purposes. Second, the court must "[s]urve[y] the legal landscape as it then existed," *Graham* v. *Collins, supra,* at 468, and "determine whether a state court considering [the defendant's] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [he] seeks was required by the Constitution," *Saffle* v. *Parks,* 494 U. S. 484, 488 (1990). Finally, even if the court determines that the defendant seeks the benefit of a new rule, the court must decide whether that rule falls within one of the two narrow exceptions to the nonretroactivity principle. See *Gilmore* v. *Taylor,* 508 U. S. 333, 345 (1993).

A

A state conviction and sentence become final for purposes of retroactivity analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied. See *Griffith* v. *Kentucky,* 479 U. S. 314, 321, n. 6 (1987). The Missouri Court of Appeals denied respondent's petition for rehearing on October 3, 1985, and respondent did not file a petition for a writ of certiorari. Respondent's conviction and sentence therefore became final on January 2, 1986—91 days (January 1 was a legal holiday) later. 28 U. S. C. §2101(c); see this Court's Rules 13.4 and 30.1.

B

In reviewing the state of the law on that date, we note that it was well established that there is no double jeopardy bar to the use of prior convictions in sentencing a persistent offender. *Spencer* v. *Texas,* 385 U. S. 554, 560 (1967). Cf. *Moore* v. *Missouri,* 159 U. S. 673, 678 (1895). Respondent's claim, however, is that the State's failure to prove his persistent-offender status at his first sentencing hearing operated as an "acquittal" of that status, so that he cannot be *again* subjected to a persistent-offender determination. See *United States* v. *Wilson,* 420 U. S. 332, 343 (1975) ("When a defendant has been acquitted of an offense, the Clause guarantees that the State shall not be permitted to make repeated attempts to convict him").

At first blush, respondent's argument would appear to be foreclosed by the fact that "[h]istorically, the pronouncement of sentence has never carried the finality that attaches to an acquittal." *United States* v. *DiFrancesco,* 449 U. S. 117, 133 (1980). In that case, we upheld the constitutionality of 18 U. S. C. §3576, a pre-Guidelines statute that allowed the United States to appeal the sentence imposed on a defendant adjudged to be a "dangerous special offender," and allowed the court of appeals to affirm the sentence, impose a different sentence, or remand to the district court for further sentencing proceedings. A review of our prior cases led us to the conclusion that "[t]his Court's decisions in the sentencing area clearly establish that a sentence does not have the qualities of constitutional finality that attend an acquittal." 449 U. S., at 134; see also *id.,* at 135, citing *Chaffin* v. *Stynchcombe,* 412 U. S. 17 (1973); *North Carolina* v. *Pearce,* 395 U. S. 711 (1969); *Bozza* v. *United States,* 330 U. S. 160 (1947); and *Stroud* v. *United States,* 251 U. S. 15 (1919).

Respondent acknowledges our traditional refusal to extend the Double Jeopardy Clause to sentencing, but contends that a different result is compelled in this case by *Bullington* v. *Missouri,* 451 U. S. 430 (1981), and *Arizona* v. *Rumsey,* 467 U. S. 203 (1984). In *Bullington,* the defendant was convicted of capital murder and sentenced to life imprisonment. After he obtained a reversal of his conviction on appeal and was reconvicted, the State again sought the death penalty. We recognized the general principle that "[t]he imposition of a particular sentence usually is not regarded as an 'acquittal' of any more severe sentence that could have been imposed." 451 U. S., at 438. We nonetheless held that because Missouri's "presentence hearing resembled and, indeed, in all relevant respects was like the immediately preceding trial on the issue of guilt or innocence," *ibid.,* the first jury's refusal to impose the death penalty operated as an acquittal of that punishment. In *Rumsey,* we extended the rationale of *Bullington* to a capital sentencing scheme in which the judge, as opposed to a jury, had initially determined that a life sentence was appropriate. 467 U. S., at 212.

Both *Bullington* and *Rumsey* were capital cases, and our reasoning in those cases was based largely on the unique circumstances of a capital sentencing proceeding. In *Bullington* itself we distinguished our contrary precedents, particularly *DiFrancesco,* on the ground that "[t]he history of sentencing practices is of little assistance to Missouri in this case, since the sentencing procedures for capital cases instituted after the decision in *Furman* [v. *Georgia,* 408 U. S. 238 (1972),] are unique." 451 U. S., at 441–442, n. 15 (internal quotation marks omitted). We recognized as much in *Pennsylvania* v. *Goldhammer,* 474 U. S. 28 (1985) *(per curiam):* "[T]he decisions of this Court 'clearly establish that a sentenc[ing *in a noncapital case*] does not have the qualities of constitutional finality that attend an acquittal.'" *Id.,* at 30, quoting *DiFrancesco, supra,* at 134 (bracketed phrase added by the *Goldhammer* Court; emphasis added).

In *Strickland* v. *Washington,* 466 U. S. 668 (1984), we held that the same standard for evaluating claims of ineffective assistance of counsel applies to trials and to capital sentencing proceedings because "[a] capital sentencing proceeding . . . is sufficiently like a trial in its adversarial format and in the existence of standards for decision, see *[Bullington],* that counsel's role in the proceeding is comparable to counsel's role at trial." *Id.,* at 686–687. Because *Strickland* involved a capital sentencing proceeding, we left open the question whether the same test would apply to noncapital cases: "We need not consider the role of counsel in an ordinary sentencing, which may involve informal proceedings and standardless discretion in the sentencer, and hence may require a different approach to the definition of constitutionally effective assistance." *Id.,* at 686; see also *id.,* at 704–705 (Brennan, J., concurring in part and dissenting in part) ("'Time and again the Court has condemned procedures in capital cases that might be completely acceptable in an ordinary case. See, *e. g., [Bullington]*'") (quoting *Barefoot* v. *Estelle,* 463 U. S. 880, 913–914 (1983) (Marshall, J., dissenting)). See also *Spaziano* v. *Florida,* 468 U. S. 447, 458 (1984).

While our cases may not have foreclosed the application of the Double Jeopardy Clause to noncapital sentencing, neither did any of them apply the Clause in that context. On the contrary, *Goldhammer* and *Strickland* strongly suggested that *Bullington* was limited to capital sentencing. We therefore conclude that a reasonable jurist reviewing our precedents at the time respondent's conviction and sentence became final would not have considered the application of the Double Jeopardy Clause to a noncapital sentencing proceeding to be dictated by our precedents. Cf. *Stringer* v. *Black,* 503 U. S., at 236–237.

This analysis is confirmed by the experience of the lower courts. Prior to the time respondent's conviction and sentence became final, one Federal Court of Appeals and two state courts of last resort had held that the Double Jeopardy Clause did not bar the introduction of evidence of prior convictions at resentencing in noncapital cases, *Linam* v. *Griffin,* 685 F. 2d 369, 374–376 (CA10 1982); *Durham* v. *State,* 464 N. E. 2d 321, 323–326 (Ind. 1984); *People* v. *Sailor,* 65 N. Y. 2d 224, 231–236, 480 N. E. 2d 701, 706–710 (1985), while another Federal Court of Appeals and two other state courts of last resort had held to the contrary, *Briggs* v. *Procunier,* 764 F. 2d 368, 371 (CA5 1985); *State* v. *Hennings,* 100 Wash. 2d 379, 386–390, 670 P. 2d 256, 259–262 (1983); *Cooper* v. *State,* 631 S. W. 2d 508, 513–514 (Tex. Crim. App. 1982). Moreover, the Missouri Court of Appeals had previously rejected precisely the same claim raised by respondent. *State* v. *Lee,* 660 S. W. 2d, at 399–400.

In its retroactivity analysis, the Court of Appeals dismissed the Tenth Circuit's decision in *Linam* as "ultimately based on trial error," 979 F. 2d, at 114, failing to recognize that the *Linam* court offered two "alternative bas[e]s for decision," 685 F. 2d, at 374—the second being that the "uniqueness of the death penalty unquestionably serves to distinguish *DiFrancesco* from *Bullington,*" *id.,* at 375. Nor did the Court of Appeals acknowledge the relevant portion of the *Lee* decision, in which a Missouri court held that "the death penalty second stage trial in a capital murder case bears no similarity to a determination of persistent offender status by a judge upon the basis of largely formal evidence." 660 S. W. 2d, at 400. Instead, the court focused on whether there was any "*federal* holding resting squarely on the proposition that *Bullington* does not apply to non-capital sentenc[e] enhancement proceedings." 979 F. 2d, at 114 (emphasis added).

At oral argument in this Court, counsel for respondent candidly admitted that he did not know "exactly what State courts had decided or when" with respect to the applicability of the Double Jeopardy Clause to noncapital sentencing. Tr. of Oral Arg. 31. In fact, two state courts had held the Double Jeopardy Clause inapplicable to noncapital sentencing prior to 1986. *Durham* v. *State, supra; People* v. *Sailor, supra.* Constitutional law is not the exclusive province of the federal courts, and in the *Teague* analysis the reasonable views of state courts are entitled to consideration along with those of federal courts. See *Butler* v. *McKellar,* 494 U. S. 407, 414 (1990).

In sum, at the time respondent's conviction and sentence became final this Court had not applied the Double Jeopardy Clause to noncapital sentencing, and indeed several of our cases pointed in the opposite direction. Two Federal Courts of Appeals and several state courts had reached conflicting holdings on the issue. Because that conflict concerned a "developmen[t] in the law over which reasonable jurists [could] disagree," *Sawyer* v. *Smith,* 497 U. S. 227, 234 (1990), the Court of Appeals erred in resolving it in respondent's favor.

Finally, to the limited extent our cases decided subsequent to the time respondent's conviction and sentence became final have any relevance to the *Teague* analysis, cf. *Graham* v. *Collins,* 506 U. S., at 472, 477, they are entirely consistent with our conclusion that the Court of Appeals announced a new rule in this case. See *Lockhart* v. *Nelson,* 488 U. S. 33, 37–38, n. 6 (1988) (reserving question whether Double Jeopardy Clause applies to noncapital sentencing); see also *Poland* v. *Arizona,* 476 U. S. 147, 155 (1986) ("*Bullington* indicates that the proper inquiry is whether the sentencer or reviewing court has 'decided that the prosecution has not proved its case' *that the death penalty is appropriate*") (emphasis in original); *Hunt* v. *New York,* 502 U. S. 964 (1991) (White, J., dissenting from denial of certiorari) (noting conflict on the question "whether the Double Jeopardy Clause applies to trial-like sentence enhancement proceedings in noncapital cases"). Because "[t]he 'new rule' principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions," *Butler* v. *McKellar*, *supra*, at 414, *a fortiori* it should protect a reasonable interpretation that is entirely consistent with subsequent cases.

C

Neither of the two narrow exceptions to the nonretroactivity principle applies to this case. The first exception is for new rules that place "certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague* v. *Lane*, 489 U. S., at 307 (internal quotation marks omitted). Imposing a double jeopardy bar in this case would have no such effect. Respondent is subject to imprisonment on each of his three convictions, regardless of whether he is sentenced as a persistent offender. The second exception is for "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Saffle* v. *Parks*, 494 U. S., at 495. Applying the Double Jeopardy Clause to successive noncapital sentencing is not such a groundbreaking occurrence. Persistent-offender status is a fact objectively ascertainable on the basis of readily available evidence. Either a defendant has the requisite number of prior convictions, or he does not. Subjecting him to a second proceeding at which the State has the opportunity to show those convictions is not unfair and will enhance the accuracy of the proceeding by ensuring that the determination is made on the basis of competent evidence.

IV

The Court of Appeals recognized that it was a "stretch" to apply the Double Jeopardy Clause to a noncapital sentencing proceeding, 979 F. 2d, at 115, one that required "[e]xtending" the rationale of *Bullington*, 979 F. 2d, at 115, but held that because it was only a "short step," *id.*, at 113, the nonretroactivity principle was not violated. We disagree. The Court of Appeals erred in directing the District Court to grant respondent a writ of habeas corpus because doing so required the announcement and application of a new rule of constitutional law. Because of our resolution of this case on *Teague* grounds, we have no occasion to decide whether the Double Jeopardy Clause applies to noncapital sentencing, or whether Missouri's persistent-offender scheme is sufficiently trial-like to invoke double jeopardy protections; nor need we consider the State's contention that *Bullington* should be overruled. The judgment of the Court of Appeals is

Reversed.

JUSTICE STEVENS, dissenting.

The nonretroactivity principle announced in the plurality opinion in *Teague* v. *Lane,* 489 U. S. 288 (1989), is a judge-made defense that can be waived. *Collins* v. *Youngblood,* 497 U. S. 37, 41 (1990). In recent years, the Court has fashioned harsh rules regarding waiver and claim forfeiture to defeat substantial constitutional claims. See, *e. g., Coleman* v. *Thompson,* 501 U. S. 722 (1991); *Murray* v. *Carrier,* 477 U. S. 478 (1986). If we are to apply such a strict approach to waiver in habeas corpus litigation, we should hold the warden to the same standard. Accordingly, given the treatment accorded the private litigant in *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.,* 510 U. S. 27 (1993) *(per curiam),* I would hold that petitioner Caspari forfeited his *Teague* defense under this Court's Rule 14.1(a).

Distinguishing *Izumi,* the Court explains that the intervention question in that case was "wholly divorced from the question on which we granted review," whereas here the *Teague* issue "is a necessary predicate to the resolution of the question presented in the petition." *Ante,* at 389–390. Yet *Izumi* itself opened by acknowledging that it "would have to address" the intervention issue "[i]n order to reach the merits of this case." 510 U. S., at 28. It is no more "necessary" to answer the *Teague* question in this case than it was, for example, in *Collins, supra.*

On the merits, I agree with the Court of Appeals. Under Missouri law courts must make findings of fact that persistent-offender status is warranted for those convicted of certain offenses when the prosecutor establishes requisite facts by proof beyond a reasonable doubt.* That status subjects the defendant to more severe sentences, Mo. Rev. Stat. § 558.016.1 (Supp. 1982), and deprives him of the opportunity to have a jury sentence him, § 557.036.2. The sentence enhancement thus has the same legal effect as conviction of a separate offense; the separate sentencing hearing likewise is the practical equivalent of the trial. Missouri law acknowledges as much by properly requiring prosecutors to prove the factual predicate for the enhanced sentence beyond a reasonable doubt.

A defendant opposing such an enhancement undoubtedly has a constitutional right to counsel and to the basic procedural protections the Due Process Clause affords. I have no hesitation in concluding that these protections include the right not to be "twice put in jeopardy" for the same offense. U. S. Const., Amdt. 5. I would affirm the judgment of the Court of Appeals.

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*Mo. Rev. Stat. § 558.021.1(2) (Supp. 1982). A "persistent offender" had previously been adjudged guilty of two or more felonies committed at different times. § 558.016.3. Missouri also mandates an enhanced sentence if the prosecutor proves that the defendant is a "dangerous offender"—meaning one who is being sentenced for a felony during which he knowingly "murdered or endangered or threatened the life" of another, who "knowingly inflicted or attempted or threatened to inflict serious physical injury" on another, or who is guilty of certain felonies. § 558.016.4. It is unfair to afford the prosecutor two opportunities to satisfy either provision.

HAGEN *v.* UTAH

CERTIORARI TO THE SUPREME COURT OF UTAH

No. 92–6281. Argued November 2, 1993—Decided February 23, 1994

Petitioner, an Indian, was charged in Utah state court with distribution of a controlled substance in the town of Myton, which lies within the original boundaries of the Uintah Indian Reservation on land that was opened to non-Indian settlement in 1905. The trial court rejected petitioner's claim that it lacked jurisdiction over him because he was an Indian and the crime had been committed in "Indian country," see 18 U. S. C. § 1151, such that federal jurisdiction was exclusive. The state appellate court, relying on *Ute Indian Tribe* v. *Utah*, 773 F. 2d 1087 (CA10), cert. denied, 479 U. S. 994, agreed with petitioner's contentions and vacated his conviction. The Utah Supreme Court reversed and reinstated the conviction, ruling that Congress had "diminished" the reservation by opening it to non-Indians, that Myton was outside its boundaries, and thus that petitioner's offense was subject to state criminal jurisdiction. See *Solem* v. *Bartlett*, 465 U. S. 463, 467 ("States have jurisdiction over . . . opened lands if the applicable surplus land Act freed that land of its reservation status and thereby diminished the reservation boundaries").

Held: Because the Uintah Reservation has been diminished by Congress, the town of Myton is not in Indian country and the Utah courts properly exercised criminal jurisdiction over petitioner. Pp. 409–422.

(a) This Court declines to consider whether the State of Utah, which was a party to the Tenth Circuit proceedings in *Ute Indian Tribe*, should be collaterally estopped from relitigating the reservation boundaries. That argument is not properly before the Court because it was not presented in the petition for a writ of certiorari and was expressly disavowed by petitioner in his response to an *amicus* brief. Pp. 409–410.

(b) Under this Court's traditional approach, as set forth in *Solem* v. *Bartlett*, *supra*, and other cases, whether any given surplus land Act diminished a reservation depends on all the circumstances, including (1) the statutory language used to open the Indian lands, (2) the contemporaneous understanding of the particular Act, and (3) the identity of the persons who actually moved onto the opened lands. As to the first, the most probative, of these factors, the statutory language must establish an express congressional purpose to diminish, but no particular form of words is prerequisite to a finding of diminishment. Moreover, although the provision of a sum certain payment to the Indians, when coupled with a statutory expression of intent, can certainly provide additional evidence of diminishment, the lack of such a provision does not lead to the contrary conclusion. Throughout the diminishment inquiry, ambiguities are resolved in favor of the Indians, and diminishment will not lightly be found. Pp. 410–412.

(c) The operative language of the Act of May 27, 1902, ch. 888, 32 Stat. 263—which provided for allotments of some Uintah Reservation land to Indians, and that "all the unallotted lands within said reservation shall be *restored to the public domain*" (emphasis added)—evidences a congressional purpose to terminate reservation status. See, *e. g., Seymour* v. *Superintendent of Wash. State Penitentiary,* 368 U. S. 351, 354–355. *Solem, supra,* at 472–476, distinguished. Contrary to petitioner's argument, this baseline intent to diminish was not changed by the Act of March 3, 1905, ch. 1479, 33 Stat. 1069. Language in that statute demonstrates that Congress clearly viewed the 1902 Act as the basic legislation upon which the 1905 Act and intervening statutes were built. Furthermore, the structure of the statutes—which contain complementary, nonduplicative essential provisions—requires that the 1905 and 1902 Acts be read together. Finally, the general rule that repeals by implication are disfavored is especially strong here, because the 1905 Act *expressly* repealed a provision in the intervening statute passed in 1903; if Congress had meant to repeal any part of any other previous statute, it could easily have done so. Pp. 412–416.

(d) The historical evidence—including letters and other statements by Interior Department officials, congressional bills and statements by Members of Congress, and the text of the 1905 Presidential Proclamation that actually opened the Uintah Reservation to settlement—clearly indicates the contemporaneous understanding that the reservation would be diminished by the opening of the unallotted lands. This conclusion is not altered by inconsistent references to the reservation in both the past and present tenses in the post-1905 legislative record. These must be viewed merely as passing references in text, not deliberate conclusions about the congressional intent in 1905. Pp. 416–420.

(e) Practical acknowledgment that the reservation was diminished is demonstrated by the current population situation in the Uintah Valley, which is approximately 85 percent non-Indian in the opened lands and 93 percent non-Indian in the area's largest city; by the fact that the seat of local tribal government is on Indian trust lands, not opened lands; and by the State of Utah's assumption of jurisdiction over the opened lands from 1905 until the Tenth Circuit decided *Ute Indian Tribe.* A contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area. Pp. 420–421.

858 P. 2d 925, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, and GINSBURG, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 422.

Martin E. Seneca, Jr., argued the cause for petitioner. With him on the briefs was *Daniel H. Israel.*

Ronald J. Mann argued the cause for the United States as *amicus curiae* urging reversal. With him on the briefs were *Solicitor General Days, Acting Assistant Attorney General Flint, Acting Deputy Solicitor General Kneedler, Edward J. Shawaker*, and *Martin W. Matzen.*

Jan Graham, Attorney General of Utah, argued the cause for respondent. With her on the brief were *Carol Clawson*, Solicitor General, and *Michael M. Quealy*, Assistant Attorney General.*

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we decide whether the Uintah Indian Reservation was diminished by Congress when it was opened to non-Indian settlers at the turn of the century. If the reservation has been diminished, then the town of Myton, Utah, which lies on opened lands within the historical boundaries of the reservation, is not in "Indian country," see 18 U. S. C.

**Robert S. Thompson III, Sandra Hansen*, and *Jeanne S. Whiteing* filed a brief for the Ute Indian Tribe as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of South Dakota et al. by *Mark Barnett*, Attorney General of South Dakota, and *John P. Guhin*, Deputy Attorney General, and for the Attorneys General of their respective States as follows: *Grant Woods* of Arizona, *Daniel E. Lungren* of California, *Marc Racicot* of Montana, *Frankie Sue Del Papa* of Nevada, and *Susan B. Loving* of Oklahoma; for Duchesne County, Utah, by *Herbert Wm. Gillespie* and *Jesse C. Trentadue;* for Fremont County, Wyoming, et al. by *James M. Johnson;* for Uintah County, Utah, by *Tom D. Tobin* and *Kenn A. Pugh;* and for the Council of State Governments et al. by *Richard Ruda* and *Charles Rothfeld.*

Briefs of *amici curiae* were filed for the Navajo Nation by *Paul E. Frye;* and for Roosevelt City by *Craig M. Bunnell.*

§ 1151, and the Utah state courts properly exercised criminal jurisdiction over petitioner, an Indian who committed a crime in Myton.

I

On October 3, 1861, President Lincoln reserved about 2 million acres of land in the Territory of Utah for Indian settlement. Executive Order No. 38–1, reprinted in 1 C. Kappler, Indian Affairs: Laws and Treaties 900 (1904). Congress confirmed the President's action in 1864, creating the Uintah Valley Reservation. Act of May 5, 1864, ch. 77, 13 Stat. 63. According to the 1864 Act, the lands were "set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same." *Ibid.* The present-day Ute Indian Tribe includes the descendants of the Indians who settled on the Uintah Reservation.

In the latter part of the 19th century, federal Indian policy changed. See F. Cohen, Handbook of Federal Indian Law 127–139 (1982 ed.). Indians were no longer to inhabit communally owned reservations, but instead were to be given individual parcels of land; any remaining lands were to be opened for settlement by non-Indians. The General Allotment Act, Act of Feb. 8, 1887, ch. 119, 24 Stat. 388, granted the President authority "to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus lands to [non-Indian] settlers, with the proceeds of these sales being dedicated to the Indians' benefit." *DeCoteau* v. *District County Court for Tenth Judicial District,* 420 U. S. 425, 432 (1975).

Pursuant to the General Allotment Act, Congress in 1894 directed the President to appoint a commission to negotiate with the Indians for the allotment of Uintah Reservation lands and the "relinquishment to the United States" of all unallotted lands. Act of Aug. 15, 1894, ch. 290, § 22, 28 Stat. 337. That effort did not succeed, and in 1898 Congress directed the President to appoint another commission to negotiate an agreement for the allotment of Uintah Reservation lands and the "cession" of unallotted lands to the United States. Act of June 4, 1898, ch. 376, 30 Stat. 429. The Indians resisted those efforts as well. Various bills that would have opened the reservation unilaterally (*i. e.*, without the consent of the Indians) were subsequently introduced in the Senate but were not enacted into law. See Leasing of Indian Lands, Hearings before the Senate Committee on Indian Affairs, S. Doc. No. 212, 57th Cong., 1st Sess., 3 (1902).

In 1902, Congress passed an Act which provided that if a majority of the adult male members of the Uintah and White River Indians consented, the Secretary of the Interior should make allotments by October 1, 1903, out of the Uintah Reservation. Act of May 27, 1902, ch. 888, 32 Stat. 263.[1] The allotments under the 1902 Act were to be 80 acres for each head of a family and 40 acres for each other member of the Tribes. The Act also provided that when the deadline for allotments passed, "all the unallotted lands within said reservation shall be restored to the public domain" and subject to homesteading at $1.25 per acre. *Ibid.* The proceeds from the sale of lands restored to the public domain were to be used for the benefit of the Indians.

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[1] The 1902 Act provided in relevant part:

"That the Secretary of the Interior, with the consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes of Ute Indians, to be ascertained as soon as practicable by an inspector, shall cause to be allotted to each head of a family eighty acres of agricultural land which can be irrigated and forty acres of such land to each other member of said tribes, said allotments to be made prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain: *Provided,* That persons entering any of said land under the homestead law shall pay therefor at the rate of one dollar and twenty-five cents per acre: *And provided further,* That . . . the proceeds of the sale of the lands so restored to the public domain shall be applied, first, to the reimbursement of the United States for any moneys advanced to said Indians to carry into effect the foregoing provisions; and the remainder, under the direction of the Secretary of the Interior, shall be used for the benefit of said Indians. And the sum of seventy thousand and sixty-four dollars and forty-eight cents is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be paid to the Uintah and the White River tribes of Ute Indians, under the direction of the Secretary of the Interior, whenever a majority of the adult male Indians of said tribes shall have consented to the allotment of lands and the restoration of the unallotted lands within said reservation as herein provided." 32 Stat. 263–264.

A month after the passage of the 1902 Act, Congress directed the Secretary of the Interior to set apart sufficient land to serve the grazing needs of the Indians remaining on the reservation. J. Res. 31, 57th Cong., 1st Sess. (1902), 32 Stat. 744.[2] The resolution clarified that $70,000 appropriated by the 1902 Act was to be paid to the Indians "without awaiting their action upon the proposed allotment in severalty of lands in that reservation and the restoration of the surplus lands to the public domain." *Id.*, at 745.

In January 1903, this Court held that Congress can unilaterally alter reservation boundaries. *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, 567–568. On Mar. 3, 1903, Congress directed the Secretary to allot the Uintah lands unilaterally if the Indians did not give their consent by June 1 of that year, and deferred the opening of the unallotted lands "as provided by the [1902 Act]" until October 1, 1904. Act of Mar. 3, 1903, ch. 994, 32 Stat. 998.[3] The 1903 Act also specified that the grazing lands specified in the 1902 Joint Resolution would be limited to 250,000 acres south of the Strawberry River. In 1904, Congress passed another statute that appropriated additional funds to "carry out the purposes" of the 1902 Act, and deferred the opening date "as provided by the [1902 and 1903 Acts]" until Mar. 10, 1905. Act of Apr. 21, 1904, ch. 1402, 33 Stat. 207.[4]

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[2] The 1902 Joint Resolution provided in relevant part:

"In addition to the allotments in severalty to the Uintah and White River Utes of the Uintah Indian Reservation in the State of Utah, the Secretary of the Interior shall, before any of said lands are opened to disposition under any public land law, select and set apart for the use in common of the Indians of that reservation such an amount of non-irrigable grazing lands therein at one or more places as will subserve the reasonable requirements of said Indians for the grazing of live stock.

. . . . .

"The item of seventy thousand and sixty-four dollars and forty-eight cents appropriated by the Act which is hereby supplemented and modified, to be paid to the Uintah and White River tribes of Ute Indians in satisfaction of certain claims named in said Act, shall be paid to the Indians entitled thereto without awaiting their action upon the proposed allotment in severalty of lands in that reservation and the restoration of the surplus lands to the public domain." 32 Stat. 744–745.

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[3] The 1903 Act provided in relevant part:

"[Money is hereby appropriated to] enable the Secretary of the Interior to do the necessary surveying and otherwise carry out the purposes of so much of the Act of May twenty-seventh, nineteen hundred and two, . . . as provides for the allotment of the . . . Uintah and White River Utes in Utah . . . : *Provided, however,* That the Secretary of the Interior shall forthwith send an inspector to obtain the consent of the Uintah and White River Ute Indians to an allotment of their lands as directed by the Act of May twenty-seventh, nineteen hundred and two, and if their consent, as therein provided, can not be obtained by June first, nineteen hundred and three, then the Secretary of the Interior shall cause to be allotted to each of said Uintah and White River Ute Indians the quantity and character of land named and described in said Act: *And provided further,* That the grazing lands to be set apart for the use of the Uintah, White River Utes, and other Indians, as provided by public resolution numbered thirty-one, of June nineteenth, nineteen hundred and two, be confined to the lands south of the Strawberry River on said Uintah Reservation, and shall not exceed two hundred and fifty thousand acres: *And provided further,* That the time for opening the unallotted lands to public entry on said Uintah Reservation, as provided by the Act of May twenty-seventh, nineteen hundred and two, be, and the same is hereby, extended to October first, nineteen hundred and four." 32 Stat. 997–998.

[4] The 1904 Act provided in relevant part:

"That the time for opening the unallotted lands to public entry on the Uintah Reservation, in Utah, as provided by the Acts of May twenty-seventh, nineteen hundred and two, and March third, nineteen hundred and three, be, and the same is hereby extended to March tenth, nineteen hundred and five, and five thousand dollars is hereby appropriated to enable the Secretary of the Interior to do the necessary surveying, and otherwise carry out the purposes of so much of the Act of May twenty-seventh, nineteen hundred and two, . . . as provides for the allotment of the Indians of the Uintah and White River Utes in Utah." 33 Stat. 207–208.

In 1905, Congress again deferred the opening date, this time until September 1, 1905, unless the President were to establish an earlier date. Act of Mar. 3, 1905, ch. 1479, 33 Stat. 1069.[5] The 1905 Act repealed the provision of the 1903 Act limiting the grazing lands to areas south of the Strawberry River. The Act further provided:

> "[T]he manner of opening [reservation] lands for settlement and entry, and for disposing of the same, shall be as follows: That the said unallotted lands . . . shall be

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[5] The 1905 Act provided in relevant part:

"That so much of the Act of March third, nineteen hundred and three, as provides that the grazing lands to be set apart for the use of the Uintah, White River Utes, and other Indians on the Uintah Reservation, as provided by public resolution numbered thirty-one, of June nineteenth, nineteen hundred and two, shall be confined to the lands south of the Strawberry River, be, and the same is hereby, repealed.

"That the time for opening to public entry the unallotted lands on the Uintah Reservation in Utah having been fixed by law as the tenth day of March, nineteen hundred and five, it is hereby provided that the time for opening said reservation shall be extended to the first of September, nineteen hundred and five, unless the President shall determine that the same may be opened at an earlier date and that the manner of opening such lands for settlement and entry, and for disposing of the same, shall be as follows: That the said unallotted lands . . . shall be disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in said proclamation, until after the expiration of sixty days from the time when the same are thereby opened to settlement and entry: . . . *And provided further*, That all lands opened to settlement and entry under this Act remaining undisposed of at the expiration of five years from the taking effect of this Act shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one person. The proceeds of the sale of such lands shall be applied as provided in the Act of Congress of May twenty-seventh, nineteen hundred and two, and the Acts amendatory thereof and supplemental thereto." 33 Stat. 1069–1070.

> disposed of under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof." *Ibid.*

All lands remaining open but unsettled after five years were to be sold for cash, in parcels up to 640 acres. The "proceeds of the sale of such lands" were to be "applied as provided in the [1902 Act] and the Acts amendatory thereof and supplemental thereto." *Id.*, at 1070.

The Government once again failed to obtain the consent of the Indians. On July 14, 1905, President Roosevelt issued the following Proclamation:

> "Whereas it was provided by the [1902 Act], among other things, that on October first, 1903, the unallotted lands in the Uintah Indian Reservation, in the State of Utah, 'shall be restored to the public domain: Provided, That persons entering any of said lands under the homestead laws shall pay therefor at the rate of [$1.25] per acre.'
>
> "And, whereas, the time for the opening of said unallotted lands was extended to October 1, 1904, by the [1903 Act], and was extended to March 10, 1905, by the [1904 Act], and was again extended to not later than September 1, 1905, by the [1905 Act], which last named act provided, among other things: ['That the said unallotted lands . . . shall be disposed of under the general provisions of the homestead and townsite laws of the United States . . . .']
>
> "Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by said Acts of Congress, do hereby declare and make known that all the unallotted lands in said

> reservation . . . will on and after the 28th day of August, 1905, in the manner hereinafter prescribed, and not otherwise, be opened to entry, settlement and disposition under the general provisions of the homestead and townsite laws of the United States." 34 Stat. 3119–3120.

The Proclamation went on to detail a lottery scheme for the allocation of the lands to settlers.

II

In 1989, petitioner was charged in Utah state court with distribution of a controlled substance. The offense occurred in the town of Myton, which was established within the original boundaries of the Uintah Indian Reservation when the reservation was opened to non-Indian settlement in 1905. Petitioner initially pleaded guilty, but subsequently filed a motion to withdraw his guilty plea. The basis of the motion was that the Utah state courts lacked jurisdiction over petitioner because he was an Indian and the crime had been committed in Indian country. The trial court denied the motion, finding that petitioner is not an Indian.

The state appellate court reversed. It concluded that petitioner is an Indian, a determination that is not at issue in this Court. The court also held that Myton is in Indian country, relying on *Ute Indian Tribe* v. *Utah,* 773 F. 2d 1087 (1985) (en banc), cert. denied, 479 U. S. 994 (1986), in which the Tenth Circuit held that the Uintah Indian Reservation was not diminished when it was opened to settlement in 1905. Because Congress has not granted criminal jurisdiction to the State of Utah to try crimes committed by Indians in Indian country, cf. *Negonsott* v. *Samuels,* 507 U. S. 99, 103 (1993); *Washington* v. *Confederated Bands and Tribes of Yakima Nation,* 439 U. S. 463, 471–474 (1979), the appellate court held that the state courts lacked jurisdiction over petitioner. The court accordingly vacated petitioner's conviction.

The Utah Supreme Court reversed on the authority of *State* v. *Perank,* 858 P. 2d 927 (1992), in which the court had held (on the same day as the decision in petitioner's case) that the reservation had been diminished and that Myton was outside its boundaries, and thus that petitioner's offense was subject to state criminal jurisdiction. 858 P. 2d 925 (1992); see *Solem* v. *Bartlett,* 465 U. S. 463, 467 (1984) ("As a doctrinal matter, the States have jurisdiction over unallotted opened lands if the applicable surplus land Act freed that land of its reservation status and thereby diminished the reservation boundaries"). The court accordingly reinstated petitioner's conviction.

We granted certiorari, 507 U. S. 1028 (1993), to resolve the direct conflict between these decisions of the Tenth Circuit and the Utah Supreme Court on the question whether the Uintah Reservation has been diminished.

III

We first address a threshold question: whether the State of Utah, which was a party to the Tenth Circuit proceedings, should be collaterally estopped from relitigating the reservation boundaries. In *Perank,* the Utah Supreme Court noted that "neither Perank, the Department of Justice, nor the Tribe suggests that the Tenth Circuit's *en banc* decision in *Ute Indian Tribe* has res judicata effect in this case." 858 P. 2d, at 931. Because "[r]es judicata is an affirmative defense in both criminal and civil cases and therefore is waivable," *id.,* at 931, n. 3, the court went on to consider the merits of the State's claim.

Petitioner's only recourse would have been to attack the judgment in *Perank* on the ground that the Utah Supreme Court failed to give effect *sua sponte* to the prior determination in *Ute Indian Tribe* that the reservation had not been diminished. Although that issue is one of federal law, see Restatement (Second) of Judgments § 86 (1982), it was not presented in the petition for a writ of certiorari. It therefore is not properly before us. *Yee* v. *Escondido,* 503 U. S. 519, 535–536 (1992); see *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.,* 510 U. S. 27 (1993) *(per curiam).* Moreover, petitioner disavowed the collateral estoppel argument at the petition stage, in response to a brief filed by the Ute Indian Tribe:

> "The question presented in the petition was whether the reservation had been diminished by acts of congress. [This Court's Rule 14.1(a)] does not appear to allow different issues to be raised. The Ute Indian Tribe argues that the Supreme Court of the State of Utah should have reached a different decision in *[Perank]* based on the doctrine of collateral estoppel . . . . Regardless of the opinion held by the Ute Indian Tribe of the *Perank* decision, *the decision has been made and is controlling in petitioner's case.*" Supplemental Brief for Petitioner 2 (filed Dec. 2, 1992) (emphasis added).

Because we see no reason to consider an argument that petitioner not only failed to raise, but also expressly refused to rely upon in seeking a writ of certiorari, we turn to the merits.

IV

In *Solem* v. *Bartlett,* we recognized:

> "It is settled law that some surplus land Acts diminished reservations, see, *e. g., Rosebud Sioux Tribe* v. *Kneip,* 430 U. S. 584 (1977); *DeCoteau* v. *District County Court,* 420 U. S. 425 (1975), and other surplus land Acts did not, see, *e. g., Mattz* v. *Arnett,* 412 U. S. 481 (1973); *Seymour* v. *Superintendent,* 368 U. S. 351 (1962). The effect of any given surplus land Act depends on the language of the Act and the circumstances underlying its passage." 465 U. S., at 469.

In determining whether a reservation has been diminished, "[o]ur precedents in the area have established a fairly clean analytical structure," *id.*, at 470, directing us to look to three factors. The most probative evidence of diminishment is, of course, the statutory language used to open the Indian lands. *Ibid.* We have also considered the historical context surrounding the passage of the surplus land Acts, although we have been careful to distinguish between evidence of the contemporaneous understanding of the particular Act and matters occurring subsequent to the Act's passage. *Id.*, at 471. Finally, "[o]n a more pragmatic level, we have recognized that who actually moved onto opened reservation lands is also relevant to deciding whether a surplus land Act diminished a reservation." *Ibid.* Throughout the inquiry, we resolve any ambiguities in favor of the Indians, and we will not lightly find diminishment. *Id.*, at 470, 472; see also *South Dakota* v. *Bourland,* 508 U. S. 679, 687 (1993) ("'[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit'" (quoting *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation,* 502 U. S. 251, 269 (1992) (internal quotation marks omitted))).

The Solicitor General, appearing as *amicus* in support of petitioner, argues that our cases establish a "clear-statement rule," pursuant to which a finding of diminishment would require both explicit language of cession or other language evidencing the surrender of tribal interests and an unconditional commitment from Congress to compensate the Indians. See Brief for United States as *Amicus Curiae* 7–8. We disagree. First, although the statutory language must "establis[h] an express congressional purpose to diminish," *Solem,* 465 U. S., at 475, we have never required any particular form of words before finding diminishment, see *Rosebud Sioux Tribe* v. *Kneip,* 430 U. S. 584, 588, and n. 4 (1977). Second, we noted in *Solem* that a statutory expression of congressional intent to diminish, coupled with the provision of a sum certain payment, would establish a nearly conclusive presumption that the reservation had been diminished. 465

U. S., at 470–471. While the provision for definite payment can certainly provide additional evidence of diminishment, the lack of such a provision does not lead to the contrary conclusion. In fact, the statutes at issue in *Rosebud,* which we held to have effected a diminishment, did not provide for the payment of a sum certain to the Indians. See 430 U. S., at 596, and n. 18. We thus decline to abandon our traditional approach to diminishment cases, which requires us to examine all the circumstances surrounding the opening of a reservation.

A

The operative language of the 1902 Act provided for allocations of reservation land to Indians, and that "all the unallotted lands within said reservation shall be *restored to the public domain.*" 32 Stat. 263 (emphasis added). The public domain was the land owned by the Government, mostly in the West, that was "available for sale, entry, and settlement under the homestead laws, or other disposition under the general body of land laws." E. Peffer, The Closing of the Public Domain 6 (1951). "[F]rom an early period in the history of the government it [was] the practice of the President to order, from time to time, . . . parcels of land belonging to the United States to be reserved from sale and set apart for public uses." *Grisar* v. *McDowell,* 6 Wall. 363, 381 (1868). This power of reservation was exercised for various purposes, including Indian settlement, bird preservation, and military installations, "when it appeared that the public interest would be served by withdrawing or reserving parts of the public domain." *United States* v. *Midwest Oil Co.,* 236 U. S. 459, 471 (1915).

It follows that when lands so reserved were "restored" to the public domain—*i. e.,* once again opened to sale or settlement—their previous public use was extinguished. See *Sioux Tribe* v. *United States,* 316 U. S. 317, 323 (1942) (President ordered lands previously reserved for Indian use " 'restored to the public domain[,] . . . the same being no longer needed for the purpose for which they were withdrawn from sale and settlement'"); *United States* v. *Pelican*, 232 U. S. 442, 445–446 (1914). Statutes of the period indicate that Congress considered Indian reservations as separate from the public domain. See, *e. g.*, Act of June 25, 1910, §6, 36 Stat. 857 (criminalizing forest fires started "upon the public domain, or upon any Indian reservation") (quoted in *United States* v. *Alford*, 274 U. S. 264, 266–267 (1927)). Likewise, in *DeCoteau* we emphasized the distinction between reservation and public domain lands: "That the lands ceded in the other agreements were *returned to the public domain, stripped of reservation status*, can hardly be questioned . . . . The sponsors of the legislation stated repeatedly that the ratified agreements would return the ceded lands to the 'public domain.'" 420 U. S., at 446 (emphasis added).

In *Solem*, the Court held that an Act which authorized the Secretary of the Interior to "'sell and dispose of'" unallotted reservation lands merely opened the reservation to non-Indian settlement and did not diminish it. 465 U. S., at 472–474. Elsewhere in the same statute, Congress had granted the Indians permission to harvest timber on the opened lands "'as long as the lands remain part of the public domain.'" *Id.*, at 475. We recognized that this reference to the public domain "support[ed]" the view that a reservation had been diminished, but that it was "hardly dispositive." *Id.*, at 475. We noted that "even without diminishment, unallotted opened lands could be conceived of as being in the 'public domain' inasmuch as they were available for settlement." *Id.*, at 475, n. 17. The Act in *Solem*, however, did not "restore" the lands to the public domain. More importantly, the reference to the public domain did not appear in the operative language of the statute opening the reservation lands for settlement, which is the relevant point of reference for the diminishment inquiry. Our cases considering *operative* language of restoration have uniformly equated it with a congressional purpose to terminate reservation status.

In *Seymour* v. *Superintendent of Wash. State Penitentiary,* 368 U. S. 351 (1962), for example, the question was whether the Colville Reservation, in the State of Washington, had been diminished. The Court noted that an 1892 Act which "'vacated and restored to the public domain'" about one-half of the reservation lands had diminished the reservation as to that half. *Id.*, at 354. As to the other half, Congress in 1906 had provided for allotments to the Indians, followed by the sale of mineral lands and entry onto the surplus lands under the homestead laws. This Court held that the 1906 Act did not result in diminishment: "Nowhere in the 1906 Act is there to be found any language similar to that in the 1892 Act expressly vacating the South Half of the reservation and restoring that land to the public domain." *Id.*, at 355. This Court subsequently characterized the 1892 Act at issue in *Seymour* as an example of Congress' using "clear language of express termination when that result is desired." *Mattz,* 412 U. S., at 504, n. 22. And in *Rosebud,* all nine Justices agreed that a statute which "'restored to the public domain'" portions of a reservation would result in diminishment. 430 U. S., at 589, and n. 5; *id.*, at 618 (Marshall, J., dissenting).

In light of our precedents, we hold that the restoration of unallotted reservation lands to the public domain evidences a congressional intent with respect to those lands inconsistent with the continuation of reservation status. Thus, the existence of such language in the operative section of a surplus land Act indicates that the Act diminished the reservation. Indeed, we have found only one case in which a Federal Court of Appeals decided that statutory restoration language did not terminate a reservation, *Ute Indian Tribe,* 773 F. 2d, at 1092, a conclusion the Tenth Circuit has since disavowed as "unexamined and unsupported." *Pittsburg & Midway Coal Mining Co.* v. *Yazzie,* 909 F. 2d 1387, 1400, cert. denied, 498 U. S. 1012 (1990).

Until the *Ute Indian Tribe* litigation in the Tenth Circuit, every court had decided that the unallotted lands were restored to the public domain pursuant to the terms of the 1902 Act, with the 1905 Act simply extending the time for opening and providing for a few details. *Hanson* v. *United States*, 153 F. 2d 162, 162–163 (CA10 1946); *United States* v. *Boss*, 160 F. 132, 133 (Utah 1906); *Uintah and White River Bands of Ute Indians* v. *United States*, 139 Ct. Cl. 1, 21–23 (1957); *Sowards* v. *Meagher*, 108 P. 1112, 1114 (Utah 1910). Petitioner argues, however, that the 1905 Act changed the "manner" in which the lands were to be opened. That Act specified that the homestead and townsite laws would apply, and so superseded the "restore to the public domain" language of the 1902 Act, language that was not repeated in the 1905 Act. We disagree, because the baseline intent to diminish the reservation expressed in the 1902 Act survived the passage of the 1905 Act.

Every congressional action subsequent to the 1902 Act referred to that statute. The 1902 Joint Resolution provided an appropriation prior to the restoration of surplus reservation lands to the public domain. 32 Stat. 744. The 1903 and 1904 Acts simply extended the deadline for opening the reservations in order to allow more time for surveying the lands, so that the "purposes" of the 1902 Act could be carried out. 32 Stat. 997; 33 Stat. 207. And the 1905 Act recognized that they were all tied together when it provided that the proceeds of the sale of the unallotted lands "shall be applied as provided in the [1902 Act] and the Acts amendatory thereof and supplementary thereto." 33 Stat. 1070. The Congress that passed the 1905 Act clearly viewed the 1902 statute as the basic legislation upon which subsequent Acts were built.

Furthermore, the structure of the statutes requires that the 1905 Act and the 1902 Act be read together. Whereas the 1905 Act provided for the disposition of *unallotted* lands, it was the 1902 Act that provided for allotments to the Indians. The 1902 Act also established the price for which the unallotted lands were to be sold, and what was to be done with the proceeds of the sales. The 1905 Act did not repeat these essential features of the opening, because they were already spelled out in the 1902 Act. The two statutes—as well as those that came in between—must therefore be read together.

Finally, the general rule that repeals by implication are disfavored is especially strong in this case, because the 1905 Act *expressly* repealed the provision in the 1903 Act concerning the siting of the grazing lands; if Congress had meant to repeal any part of any other previous statute, it could easily have done so. Furthermore, the predicate for finding an implied repeal is not present in this case, because the opening provisions of the two statutes are not inconsistent: The 1902 Act also provided that the unallotted lands restored to the public domain could be sold pursuant to the homestead laws. Other surplus land Acts which we have held to have effected diminishment similarly provided for initial entry under the homestead and townsite laws. See *Rosebud, supra,* at 608; *DeCoteau,* 420 U. S., at 442.

B

Contemporary historical evidence supports our conclusion that Congress intended to diminish the Uintah Reservation. As we have noted, the plain language of the 1902 Act demonstrated the congressional purpose to diminish the Uintah Reservation. Under the 1902 Act, however, the consent of the Indians was required before the reservation could be diminished; that consent was withheld by the Indians living on the reservation. After this Court's *Lone Wolf* decision in 1903, Congress authorized the Secretary of the Interior to proceed unilaterally. The Acting Commissioner for Indian Affairs in the Department of the Interior directed Indian Inspector James McLaughlin to travel to the Uintah Reservation to "endeavor to obtain [the Indians'] consent to the allotment of lands as provided in the law, and to the restoration of the surplus lands." Letter from A. C. Tonner to James McLaughlin (Apr. 27, 1903), reprinted in S. Doc. No. 159, 58th Cong., 3d Sess., 9 (1905). The Acting Commissioner noted, however, that the effect of the 1903 Act was that "if the [Indians] do not consent to the allotments by the first of June next the allotments are to be made notwithstanding, and the unallotted lands . . . are to be opened to entry" according to the terms of the 1902 Act. *Id.*, at 8–9.

Inspector McLaughlin explained the effect of these recent developments to the Indians living on the Reservation:

> "'By that decision of the Supreme Court, Congress has the legal right to legislate in regard to Indian lands, and Congress has enacted a law which requires you to take your allotments.
>
> . . . . .
>
> "'You say that [the Reservation boundary] line is very heavy and that the reservation is nailed down upon the border. That is very true as applying to the past many years and up to now, but congress has provided legislation which will pull up the nails which hold down that line and *after next year there will be no outside boundary line to this reservation.*'" Minutes of Councils Held by James McLaughlin, U. S. Indian Inspector, with the Uintah and White River Ute Indians at Uintah Agency, Utah, from May 18 to May 23, 1903, excerpted in App. to Brief for Respondent 4a–5a (emphasis added).

Inspector McLaughlin's picturesque phrase reflects the contemporaneous understanding, by him conveyed to the Indians, that the reservation would be diminished by operation of the 1902 and 1903 Acts notwithstanding the failure of the Indians to give their consent.

The Secretary of the Interior informed Congress in February 1904 that the necessary surveying could not be completed before the date set for the opening, and requested that the opening be delayed. Letter from E. A. Hitchcock to the Chairman of the Senate Committee on Indian Affairs (Feb. 6, 1904), reprinted in S. Doc. No. 159, *supra,* at 17. In the 1904 Act, Congress accordingly extended the time for opening until March 10, 1905, and appropriated additional funds "to enable the Secretary of the Interior to do the necessary surveying" of the reservation lands. 33 Stat. 207. The Secretary of the Interior subsequently informed Congress that a further extension would be necessary because the surveying and allotments could not be completed during the winter. Letter from E. A. Hitchcock to the Chairman of the House Committee on Indian Affairs (Dec. 10, 1904), reprinted in S. Doc. No. 159, *supra,* at 21.

The House of Representatives took up the matter on January 21, 1905. The bill on which debate was held provided that "so much of said lands as will be under the provisions of said acts restored to the public domain shall be open to settlement and entry by proclamation of the President of the United States, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered." H. R. 17474, quoted in 39 Cong. Rec. 1180 (1905). Representative Howell of Utah offered as an amendment "[t]hat for one year immediately following the restoration of said lands to the public domain said lands shall be subject to entry only under the homestead, town-site, and mining laws of the United States." *Ibid.* Significantly, Representative Howell offered his amendment as an addition to, not a replacement for, the language in the bill that explicitly referred to the lands' restoration to the public domain. He explained:

> "In the pending bill these lands, when restored to the public domain, are subject to entry under the general land laws of the United States, coupled with such rules and regulations as the President may prescribe. In my humble judgment there should be some provision such as is embodied in my amendment, limiting the lands in the reservation to entry under the homestead, town-site,

> and mining laws alone for one year from the date of the opening. . . .
>
> "Congress should see to it that until such time as those lands easy of access, reclamation, and irrigation are settled by actual home makers the provisions of the homestead law alone shall prevail. This policy is in accord with the dominant sentiment of the time, viz, that the public lands shall be reserved for actual homes for the people." *Id.*, at 1182.

Although the amendment was rejected in the House of Representatives, *id.*, at 1186, the Senate substituted the current version of the 1905 Act, which is similar to the amendment offered by Representative Howell but omits the restoration language of the House version. *Id.*, at 3522. In the hearings on the Senate bill, Senator Teller of Colorado had stated that "I am not going to agree to any entry of that land except under the homestead and town-site entries," because "I am not going to consent to any speculators getting public land if I can help it." Indian Appropriation Bill, 1906, Hearings before the Senate Subcommittee of the Committee on Indian Affairs, 58th Cong., 3d Sess., 30 (1905). Thus, although we have no way of knowing for sure why the Senate decided to limit the "manner" of opening, it seems likely that Congress wanted to limit land speculation. That objective is not inconsistent with the restoration of the unallotted lands to the public domain: Once the lands became public, Congress could of course place limitations on their entry, sale, and settlement.

The Proclamation whereby President Roosevelt actually opened the reservation to settlement makes clear that the 1905 Act did not repeal the restoration language of the 1902 Act. In that document, the President stated that the 1902 Act provided that the unallotted lands were to be restored to the public domain, that the 1903, 1904, and 1905 Acts extended the time for the opening, and that those lands were now opened for settlement under the homestead laws "by virtue of the power in [him] vested *by said Acts of Congress.*" 34 Stat. 3120 (emphasis added). President Roosevelt thus clearly understood the 1905 Act to incorporate the 1902 Act, and specifically the restoration language. This "unambiguous, contemporaneous, statement, by the Nation's Chief Executive," *Rosebud,* 430 U. S., at 602, is clear evidence of the understanding at the time that the Uintah Reservation would be diminished by the opening of the unallotted lands to non-Indian settlement.

The subsequent history is less illuminating than the contemporaneous evidence. Since 1905, Congress has repeatedly referred to the Uintah Reservation in both the past and present tenses, reinforcing our longstanding observation that "[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States* v. *Philadelphia Nat. Bank,* 374 U. S. 321, 348–349 (1963) (internal quotation marks omitted). The District Court in the *Ute Indian Tribe* case extensively cataloged these congressional references, and we agree with that court's conclusion: "Not only are the references grossly inconsistent when considered together, they . . . are merely passing references in text, not deliberate expressions of informal conclusions about congressional intent in 1905." 521 F. Supp. 1072, 1135 (Utah 1981). Because the textual and contemporaneous evidence of diminishment is clear, however, the confusion in the subsequent legislative record does nothing to alter our conclusion that the Uintah Reservation was diminished.

C

Finally, our conclusion that the statutory language and history indicate a congressional intent to diminish is not controverted by the subsequent demographics of the Uintah Valley area. We have recognized that "[w]hen an area is predominately populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains

Indian country seriously burdens the administration of state and local governments." *Solem,* 465 U. S., at 471–472, n. 12. Of the original 2 million acres reserved for Indian occupation, approximately 400,000 were opened for non-Indian settlement in 1905. Almost all of the non-Indians live on the opened lands. The current population of the area is approximately 85 percent non-Indian. 1990 Census of Population and Housing, Summary Population and Housing Characteristics: Utah, 1990 CPH–1–46, Table 17, p. 73. The population of the largest city in the area—Roosevelt City, named for the President who opened the reservation for settlement—is about 93 percent non-Indian. *Id.,* Table 3, p. 13.

The seat of Ute tribal government is in Fort Duchesne, which is situated on Indian trust lands. By contrast, we found it significant in *Solem* that the seat of tribal government was located on opened lands. 465 U. S., at 480. The State of Utah exercised jurisdiction over the opened lands from the time the reservation was opened until the Tenth Circuit's *Ute Indian Tribe* decision. That assumption of authority again stands in sharp contrast to the situation in *Solem,* where "tribal authorities and Bureau of Indian Affairs personnel took primary responsibility for policing . . . the opened lands during the years following [the opening in] 1908." 465 U. S., at 480. This "jurisdictional history," as well as the current population situation in the Uintah Valley, demonstrates a practical acknowledgment that the Reservation was diminished; a contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area. Cf. *Rosebud, supra,* at 604–605.

V

We conclude that the Uintah Indian Reservation has been diminished by Congress. Accordingly, the town of Myton, where petitioner committed a crime, is not in Indian country and the Utah courts properly exercised criminal jurisdiction over him. We therefore affirm the judgment of the Utah Supreme Court.

So ordered.

JUSTICE BLACKMUN, with whom JUSTICE SOUTER joins, dissenting.

"Great nations, like great men, should keep their word," *FPC* v. *Tuscarora Indian Nation*, 362 U. S. 99, 142 (1960) (Black, J., dissenting), and we do not lightly find that Congress has broken its solemn promises to Indian tribes. The Court relies on a single, ambiguous phrase in an Act that never became effective, and which was deleted from the controlling statute, to conclude that Congress must have intended to diminish the Uintah Valley Reservation. I am unable to find a clear expression of such intent in either the operative statute or the surrounding circumstances and am compelled to conclude that the original Uintah Valley Reservation boundaries remain intact.

I

A

Two rules of construction govern our interpretation of Indian surplus-land statutes: we must find clear and unequivocal evidence of congressional intent to reduce reservation boundaries, and ambiguities must be construed broadly in favor of the Indians.[1] Congress alone has authority to divest Indians of their land, see *United States* v. *Celestine*, 215 U. S. 278, 285 (1909), and "Congress [must] clearly evince an 'intent . . . to change . . . boundaries' before diminishment will be found." *Solem* v. *Bartlett*, 465 U. S. 463, 470 (1984), quoting *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 615 (1977); see also *DeCoteau* v. *District County Court for Tenth Judicial District*, 420 U. S. 425, 444 (1975); *Mattz* v. *Arnett*, 412 U. S. 481, 505 (1973). Absent a "plain and unambiguous" statement of congressional intent, *United States* v. *Santa Fe Pacific R. Co.*, 314 U. S. 339, 346 (1941), we find diminishment only "[w]hen events surrounding the [Act's] passage . . . *unequivocally* reveal a widely held, contemporaneous understanding" that such was Congress' purpose. *Solem*, 465 U. S., at 471 (emphasis added).

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[1] "The canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians," *County of Oneida* v. *Oneida Indian Nation of N. Y.*, 470 U. S. 226, 247 (1985), and the Indians' unequal bargaining power when agreements were negotiated, see, *e. g., Choctaw Nation* v. *United States*, 119 U. S. 1, 28 (1886); *Jones* v. *Meehan*, 175 U. S. 1, 11 (1899). "[T]reaties were imposed upon [the Indians] and they had no choice but to consent. As a consequence, this Court often has held that treaties with the Indians must be interpreted as they would have understood them, . . . and any doubtful expressions in them should be resolved in the Indians' favor." *Choctaw Nation* v. *Oklahoma*, 397 U. S. 620, 631 (1970). Because Congress' au-

In diminishment cases, the rule that "legal ambiguities are resolved to the benefit of the Indians" also must be given "the broadest possible scope." *DeCoteau*, 420 U. S., at 447; see also *Carpenter* v. *Shaw*, 280 U. S. 363, 367 (1930) ("Doubtful expressions are to be resolved in favor of the [Indians]"); *United States* v. *Nice*, 241 U. S. 591, 599 (1916); *United States* v. *Celestine*, 215 U. S., at 290. For more than 150 years,[2] we have applied this canon in all areas of Indian law to construe

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thority to legislate unilaterally on behalf of the Indians derives from the presumption that Congress will act with benevolence, courts "have developed canons of construction that treaties and other federal action should when possible be read as protecting Indian rights and in a manner favorable to Indians." F. Cohen, Handbook of Federal Indian Law 221 (1982 ed.) (hereinafter Cohen). The principle "has been applied to the particular issue of reservation termination to require that the intent of Congress to terminate be clearly expressed." *Id.*, at 43.

[2] The maxim that ambiguous provisions should be construed in favor of the Indians was first articulated by Justice McLean in *Worcester* v. *Georgia*, 6 Pet. 515, 582 (1832) (concurring opinion) ("The language used in treaties with the Indians should never be construed to their prejudice"); see also *Choate* v. *Trapp*, 224 U. S. 665, 675 (1912) ("This rule of construction has been recognized, without exception, for more than a hundred years").

congressional ambiguity or silence, in treaties, statutes, executive orders, and agreements, to the Indians' benefit.[3]

Although the majority purports to apply these canons in principle, see *ante,* at 410–411, it ignores them in practice, resolving every ambiguity in the statutory language, legislative history, and surrounding circumstances in favor of the State and imputing to Congress, where no clear evidence of congressional intent exists, an intent to diminish the Uintah Valley Reservation.

B

The special canons of construction are particularly relevant in the diminishment context because the allotment statutes are often ambiguous regarding their effect on tribal jurisdiction and reservation boundaries. During the 19th century, land was considered Indian country and thus subject to tribal jurisdiction "whenever the Indian title had not been extinguished." *Bates* v. *Clark,* 95 U. S. 204, 208 (1877). In passing the General Allotment Act of Feb. 8, 1887, 24 Stat. 388, and related statutes, Congress no doubt assumed that tribal jurisdiction would terminate with the sale of Indian lands and that the reservations eventually would be abolished. See *Solem*, 465 U. S., at 468. The General Allotment Act itself did not terminate the reservation system, however, but was intended to assimilate[4] the Indians by transforming them into agrarians and opening their lands to non-Indians. See *Mattz*, 412 U. S., at 496. After this goal of the allotment policies proved to be a disastrous failure,[5] Congress reversed course with the passage of the Indian Reorganization Act of 1934, 48 Stat. 984, as amended, 25 U. S. C. § 461 *et seq.* (1988 ed. and Supp. IV), which allowed surplus-opened Indian lands to be restored to tribal ownership. Finally, in 1948 Congress resolved the ensuing jurisdictional conflicts by extending tribal jurisdiction to encompass lands owned by non-Indians within reservation boundaries. See Act of June 25, 1948, 62 Stat. 757 (codified as 18 U. S. C. § 1151 (defining "Indian country" as including "all land within the limits of any Indian reservation under the jurisdiction of the United States Government")).[6] Reservation boundaries, rather than Indian title, thus became the measure of tribal jurisdiction.

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[3] The canon has been applied to treaties and statutes to preserve broad tribal water rights, see, *e. g., Choctaw Nation* v. *Oklahoma,* 397 U. S., at 631; *Winters* v. *United States,* 207 U. S. 564, 576 (1908), hunting and fishing rights, see, *e. g., Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.,* 443 U. S. 658, 675 (1979); *Antoine* v. *Washington,* 420 U. S. 194, 199–200 (1975); *Menominee Tribe* v. *United States,* 391 U. S. 404, 406, n. 2, 413 (1968); *Tulee* v. *Washington,* 315 U. S. 681, 684–685 (1942); *Alaska Pacific Fisheries* v. *United States,* 248 U. S. 78, 89 (1918), and other land rights, see, *e. g., County of Oneida* v. *Oneida Indian Nation of N. Y.,* 470 U. S., at 247–248; *United States* v. *Santa Fe Pacific R. Co.,* 314 U. S. 339, 354 (1941); *Minnesota* v. *Hitchcock,* 185 U. S. 373, 396 (1902); and to protect tribes from state taxation authority, see, *e. g., Bryan* v. *Itasca County,* 426 U. S. 373, 392 (1976); *McClanahan* v. *Arizona State Tax Comm'n,* 411 U. S. 164, 174 (1973); *Squire* v. *Capoeman,* 351 U. S. 1, 6–7 (1956); *Carpenter* v. *Shaw,* 280 U. S. 363, 366–367 (1930); *Choate* v. *Trapp,* 224 U. S., at 675; *The Kansas Indians,* 5 Wall. 737, 760 (1867).

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[4] "The theory of assimilation was used to justify the [allotment] legislation as beneficial to Indians. Proponents of assimilation policies maintained that if Indians adopted the habits of civilized life they would need less land, and the surplus would be available for white settlers. The taking of these lands was justified as necessary for the progress of civilization as a whole." Cohen 128.

[5] The 138 million acres held exclusively by Indians in 1887 when the General Allotment Act was passed had been reduced to 52 million acres by 1934. See 2 F. Prucha, The Great Father 896 (1984). John Collier testified before Congress that nearly half of the lands remaining in Indian hands were desert or semidesert, and that 100,000 Indians were "totally landless as a result of allotment." Hearings on H. R. 7902 before the House Committee on Indian Affairs, 73d Cong., 2d Sess., 17 (1934); see also D. Otis, The Dawes Act and the Allotment of Indian Lands 124–155 (Prucha ed. 1973) (discussing results of the allotments by 1900).

[6] Congress' extension of tribal jurisdiction to reservation lands owned by non-Indians served pragmatic ends. "[W]here the existence or non-existence of an Indian reservation, and therefore the existence or non-existence of federal jurisdiction, depends upon the ownership of particular parcels of land, law enforcement officers operating in the area will find it necessary to search tract books in order to determine whether criminal jurisdiction over each particular offense . . . is in the State or Federal

As a result of the patina history has placed on the allotment Acts, the Court is presented with questions that their architects could not have foreseen. It resolves the resulting statutory ambiguities by requiring clear evidence of specific congressional intent to diminish a reservation based on the language and circumstances of each individual land Act. See *Solem,* 465 U. S., at 469. Accordingly, statutory language alone of sale and settlement to non-Indians is insufficient to establish diminishment. "The mere fact that a reservation has been opened to settlement does not necessarily mean that the opened area has lost its reservation status." *Rosebud,* 430 U. S., at 586–587; see also *DeCoteau,* 420 U. S., at 444 ("[R]eservation status may survive the mere opening of a reservation to settlement"). "[S]ome surplus land Acts diminished reservations, . . . and other surplus land Acts did not," *Solem,* 465 U. S., at 469, and we have refused to find diminishment based on language of opening or sale absent additional unequivocal evidence of a congressional intent to reduce reservation boundaries or divest all Indian interests. Thus, in *Seymour* v. *Superintendent of Wash. State Penitentiary,* 368 U. S. 351, 355 (1962), the Court found no diminishment under a statute providing for the settlement and entry of surplus lands under the homestead laws, and in *Mattz,* 412 U. S., at 495, the Court concluded that a statute opening the reservation "'subject to settlement, entry, and purchase under the laws of the United States granting homestead rights'" did "not, alone, recite or even suggest that Congress intended thereby to terminate the . . . Reservation," *id.,* at 497. Most recently, in *Solem,* 465 U. S., at 472, we unanimously agreed that a statute authorizing the Secretary of

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Government. Such an impractical pattern of checkerboard jurisdiction was avoided by the plain language of § 1151." *Seymour* v. *Superintendent of Wash. State Penitentiary,* 368 U. S. 351, 358 (1962) (footnote omitted).

the Interior to "'sell and dispose'" of surplus Indian lands did not diminish the reservation.

In contrast, the only two cases in which this Court previously has found diminishment involved statutes and underlying tribal agreements to "'cede, sell, relinquish, and convey to the United States all [the Indians'] claim, right, title, and interest'" in unallotted lands, *DeCoteau*, 420 U. S., at 439, n. 22, or to "'cede, surrender, grant, and convey to the United States all [the Indians'] claim, right, title, and interest'" in a defined portion of the reservation, *Rosebud*, 430 U. S., at 591, n. 8. The Court held that in the presence of statutory language "precisely suited" to diminishment, *id.*, at 597, supported by the express consent of the tribes, "the intent of all parties to effect a clear conveyance of all unallotted lands was evident." *DeCoteau*, 420 U. S., at 436, n. 16.[7] I need hardly add that no such language or underlying Indian consent accompanies the statute at issue in this case.

II

A

The majority opinion relies almost exclusively on the fact that the Act of May 27, 1902, 32 Stat. 263, "restored [the unallotted lands] to the public domain" to conclude that the Uintah Valley Reservation was diminished. I do not agree that this ambiguous phrase can carry the weight of evincing a clear congressional purpose. We never authoritatively have defined the public domain, and the phrase "has no official definition. In its most general application, a public domain is meant to include all the land owned by a government—any government, anywhere." E. Peffer, The Closing of the Public Domain 5 (1951) (footnote omitted).[8] Most commonly, the public domain and public lands "have been defined as those lands subject to sale or other disposal under the general land laws." *Utah Div. of State Lands* v. *United States,* 482 U. S. 193, 206 (1987), quoting E. Baynard, Public Land Law and Procedure § 1.1, p. 2 (1986); see also *Kindred* v. *Union Pacific R. Co.,* 225 U. S. 582, 596 (1912) (the term "public lands" ordinarily was "used to designate such lands as are subject to sale or other disposal under general laws"); *Union Pacific R. Co.* v. *Harris,* 215 U. S. 386, 388 (1910); *Newhall* v. *Sanger,* 92 U. S. 761, 763 (1876) ("The words 'public lands' are habitually used . . . to describe such as are subject to sale or other disposal under general laws").

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[7] Other statutes have used express language of geographical termination. See 15 Stat. 221 ("the Smith River reservation is hereby discontinued") and 33 Stat. 218 ("the reservation lines . . . are hereby, abolished").

Nothing in our precedents stating that lands reserved from the public domain were "reserved from sale," *Grisar* v. *McDowell,* 6 Wall. 363, 381 (1868), or "withdrawn from sale and settlement," *Sioux Tribe* v. *United States,* 316 U. S. 317, 323 (1942) (internal quotation marks omitted), however, demonstrates that restoration of those lands to the public domain was "inconsistent" with continued reservation status, *ante,* at 416. Under 19th-century Indian-land policies, non-Indians could not purchase, and generally could not enter, lands reserved for exclusive use by Indian tribes. Indian reservations obviously were not part of the public domain to the extent that they were reserved from non-Indian purchase. The opening of these lands under the allotment Acts, on the other hand, necessarily restored *all* such lands to the public domain, in the sense that the lands were made available for entry and sale. Restoration of lands to the public domain thus establishes only that the lands were opened to access by non-Indians and to settlement and purchase, a condition "completely consistent with continued reservation status." *Mattz,* 412 U. S., at 497.

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[8] Although the phrase "public domain" appears infrequently in our precedents, this Court has used it interchangeably with references to "public land[s]." See, *e. g., United States* v. *Midwest Oil Co.,* 236 U. S. 459, 468 (1915). Black's Law Dictionary 1229 (6th ed. 1990) defines the public domain as "[l]and and water in possession of and owned by the United States and the states individually . . . . *See also* Public Lands." See *Amoco Production Co.* v. *Gambell,* 480 U. S. 531, 549, n. 15 (1987) ("reject[ing] the assertion that the phrase 'public lands,' in and of itself, has a precise meaning, without reference to a definitional section or its context in a statute").

In our most recent diminishment case, we unanimously rejected the argument adopted by the majority here—that "Congress would refer to opened lands as being part of the public domain only if the lands had lost all vestiges of reservation status." *Solem,* 465 U. S., at 475. Instead, we observed that "even without diminishment, unallotted opened lands could be conceived of as being in the 'public domain' inasmuch as they were available for settlement." *Id.,* at 475, n. 17; see also Whether Surplus Lands in Uintah and Ouray Reservation are Indian Lands, 2 Op. Sol. 1205 (1943) ("[R]estored to the public domain" is "only a method of indicating that the lands are to be subject to disposition under the public land laws"). *Solem* concerned an allotment statute that referred to opened lands as "part of the public domain," 465 U. S., at 475, and as "within the respective reservations thus diminished," *id.,* at 474 (internal quotation marks omitted). The Court refused to infer diminishment from this language, however, finding "considerable doubt as to what Congress meant in using these phrases." *Id.,* at 475, n. 17. We concluded that when balanced against the applicable statute's stated goal of opening the reservation for sale to non-Indians, "these two phrases cannot carry the burden of establishing an express congressional purpose to diminish." *Id.,* at 475.

The majority's focus on the fact that the public domain language in *Solem* was not in the operative portion of the statute, see *ante,* at 413, ignores the *Solem* Court's additional conclusion that the public domain is an ambiguous concept that is not incompatible with reservation status. Furthermore, the fact that the public domain language in *Solem* was not operative and did not use the word "restored" should be irrelevant under the majority's own analysis, since the character of the lands as "part of the public domain" would be "inconsistent" with their continued reservation status. *Ante,* at 413, 416. Under the majority's present interpretation, the opened lands could not have been both part of the public domain and part of the reservation. *Solem,* however, concluded precisely the opposite.[9]

In light of this Court's unanimous reasoning in *Solem* and our common interpretation of the public domain as lands "subject to sale . . . under general laws," *Kindred,* 225 U. S., at 596, therefore, I cannot conclude that the isolated phrase "restored to the public domain" is an "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests," *Solem,* 465 U. S., at 470. This language bears no relation to the "plain and unambiguous" language that our precedents require or that we found controlling in *DeCoteau* and *Rosebud.* Restoration to the public domain simply allowed Indian lands to be sold, something we repeatedly have said is never sufficient to establish an intent to diminish.

B

Although the Court relies on the negotiation history of the 1902 Act and that of the Act of Mar. 3, 1903, ch. 994, 32 Stat. 998, to support its conclusion, nothing in the negotiations with the Ute Indian Tribe "unequivocally reveal[s] a widely held, contemporaneous understanding" that the Uintah Reservation boundaries would be diminished. *Solem*, 465 U. S., at 471. The ever-present Inspector James McLaughlin, who negotiated the *Rosebud* and *DeCoteau* agreements that this Court found to contain express language of disestablishment, used no comparable language here.[10] Instead, McLaughlin spoke largely in terms of "opening" the reservation to use by non-Indians.[11] The Indians similarly responded primarily in terms of "opening" and opposed the proposed sale.[12]

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[9] The Court never before has held that an isolated reference to the public domain is sufficient to support a finding of diminishment. In every case relied upon by the majority for this contention, the relevant public domain language was accompanied by express additional language demonstrating such intent. See *DeCoteau,* 420 U. S., at 446 ("returned to the public domain, *stripped of reservation status*") (emphasis added). Three of the cases cited by the majority, in fact, discuss the same statute, 27 Stat. 62. See *Seymour,* 368 U. S., at 354 ("'*vacated* and restored to the public domain'") (emphasis added); *Mattz* v. *Arnett,* 412 U. S. 481, 504, n. 22 (1973) (same); *United States* v. *Pelican,* 232 U. S. 442, 445 (1914) (same).

The Court isolates a single comment by McLaughlin from the six days of negotiations to argue that diminishment was understood. But McLaughlin's "picturesque" statement that "'there will be no outside boundary line to this reservation,'" *ante,* at 417, cannot be understood as a statement that the reservation itself was being abolished, since the Uintah Valley Reservation unquestionably survived the opening. McLaughlin's discussion, which went on to explain that each Indian "will have a boundary to your individual holdings," Minutes 368a, is more readily understood as a reference to a change in *title* to the reservation lands, which clearly would have occurred under the Acts, or to the fact that the lands within the reservation boundary would be open to entry by non-Indians.

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[10] In negotiating the 1901 Agreement, for example, McLaughlin explained to the Rosebud Sioux Indians that "'[t]he cession of Gregory County' by ratification of the Agreement 'will leave your reservation a compact, and almost square tract . . . about the size and area of Pine Ridge Reservation.'" *Rosebud*, 430 U. S., at 591–592.

[11] See, *e. g.*, Minutes of Councils Held by Inspector James McLaughlin, U. S. Indian Inspector, with the Uintah and White River Ute Indians, at Uintah Agency, Utah, from May 18 to May 23, 1903, excerpted in App. to Brief for Duchesne County, Utah, as *Amicus Curiae* 333a, 336a (hereinafter Minutes) ("After you have taken your allotments the remaining land is to be opened for settlement"), *id.*, at 342a ("The surplus lands will be opened to settlement"), *id.*, at 354a ("As certainly as the sun rises tomorrow [your reservation] is to be opened"), *id.*, at 358a ("[I]t is not for you to say whether your reservation is to be opened or not"), *id.*, at 359a ("Do not lose sight of the fact that the reservation is to be opened"), *id.*, at 363a ("The reservation will certainly be opened").

[12] See, *e. g.*, *id.*, at 339a ("When they put us on the reservation . . . they were not to open it"), *id.*, at 340a ("The president made this reservation here for the Indians and it ought not to be opened up"), *id.*, at 343a ("I don't want you to talk to us about opening our reservation. . . . We don't want this reservation opened, and we do not want White people coming in among us"), *id.*, at 344a ("[W]e do not want this reservation thrown open"), *ibid.* ("[T]hey told us that this land would be ours always and that it would never be opened"), *id.*, at 346a ("We are not going to talk about opening our reservation"), *ibid.* ("[W]e do not want to have the reservation thrown open"), *id.*, at 351a ("I am on this reservation, and I do not want this land thrown open"), *id.*, at 357a ("[T]he Indians do not want the reservation opened").

McLaughlin's statements immediately following this passage strongly suggest that some Indian interests survived the opening. In response to Indian concerns regarding lifting of the reservation line, McLaughlin stated:

> "You fear that you are going to be confined to the tract of land allotted. That is not so, and I will explain a little more clearly. . . . Your Agency will be continued just the same as now; the Agent will have full jurisdiction just the same as now, to protect your interests." *Id.,* at 368a–369a.

Elsewhere, McLaughlin confirmed this statement: "My friends, when you take your allotment you are deprived of no privileges you have at the present time." *Id.,* at 365a.

Although the discussions regarding the allotments concededly are subject to varying interpretations, none of them provides the type of unequivocal evidence of an intent to diminish boundaries or abolish all Indian interests that we require where statutory intent to diminish the reservation is not express. On their face, the negotiations establish that the 1902 Act would have done "no more than open the way for non-Indian settlers to own land on the reservation." *Seymour,* 368 U. S., at 356. Moreover, the record contains no evidence whatsoever of the Indians' contemporaneous understanding regarding the Act of Mar. 3, 1905, 33 Stat. 1069, which is the operative Act in this case.

What the negotiations do show is that the Indians overwhelmingly opposed the allotments. After six days of meetings between McLaughlin and the Ute Tribe, only 82 of the 280 adult male Utes agreed to sign the allotment agreement, see Letter of May 30, 1903, from McLaughlin to the Secretary of the Interior, reprinted in H. Doc. No. 33, 58th Cong., 1st Sess., 5 (1903), and McLaughlin reported that the Ute Indians were "unanimously opposed to the opening of their reservation." *Id.*, at 7. Although after *Lone Wolf* v. *Hitchcock*, 187 U. S. 553 (1903), Congress unquestionably had authority to terminate reservations unilaterally, we relied heavily on the presence of tribal consent in *Rosebud* and *DeCoteau* to find a contemporaneous intent to diminish. In *Solem*, by contrast, we held that the surrounding circumstances "fail[ed] to establish a clear congressional purpose to diminish the reservation" because the 1908 Act there "did not begin with an agreement between the United States and the Indian Tribes." 465 U. S., at 476. To the extent that the absence of formal tribal consent counseled against a finding of diminishment in *Solem*, therefore, the Ute Indians' persistent withholding of consent requires a similar conclusion here.

III

A

Even if the 1902 Act's public domain language were express language of diminishment, I would conclude that the Uintah Valley Reservation was not diminished because that provision did not remain operative in the 1905 Act. It was this latter Act that actually opened the Uintah Valley Reservation to sale and settlement, and that Act's language on its face does not support a finding of diminishment. The Act provided in relevant part:

> "That the time for *opening to public entry* the unallotted lands on the Uintah Reservation in Utah having been fixed by law . . . it is hereby provided that the time

> for *opening said reservation* shall be extended . . . and that the *manner of opening such lands for settlement and entry*, and for disposing of the same, shall be as follows: That the said unallotted lands . . . *shall be disposed of under the general provisions of the homestead and town-site laws of the United States and shall be opened to settlement and entry*. . . . *And provided further*, That . . . [t]he proceeds of the sale of such lands shall be applied as provided in the Act of Congress of May twenty-seventh, nineteen hundred and two, and the Acts amendatory thereof and supplemental thereto." 33 Stat. 1069–1070 (emphasis added in part).

This language, which speaks only of opening the lands for entry and settlement, is indistinguishable from that which we previously have concluded "cannot be interpreted to mean that the reservation was to be terminated." *Mattz*, 412 U. S., at 504; see also *Solem*, 465 U. S., at 473; and *Seymour*, 368 U. S., at 356. Neither the Court nor the parties dispute this conclusion.

Nor did the 1905 Act preserve the 1902 Act's public domain provision. In contrast to the Act of Apr. 21, 1904, 33 Stat. 207, the 1905 Act did not open the lands "as provided by" the 1902 Act, *ibid.*, nor was it passed expressly to "carry out the purposes of" the 1902 Act, as were both the 1903 and 1904 Acts. See 32 Stat. 997 and 33 Stat. 207. On its face, the 1905 Act preserved only one portion of the earlier statute—that portion regarding payment of the proceeds from the unallotted land sales. Other provisions of the 1902 Act unquestionably were superseded, since the 1905 Act restricted settlement of the opened lands to that under "the general provisions of the homestead and town-site laws," 33 Stat. 1069, rather than under the general laws as provided by the 1902 Act. Thus, the plain language of the 1905 Act, which actually opened the reservation, did *not* restore the unallotted lands to the public domain, but simply opened the lands for settlement.

Nothing in this case suggests that the 1902 Act established a baseline intent to diminish the reservation like that the Court confronted in *Rosebud.* In that case, an original statute and agreement with the Indians to "cede, surrender, grant, and convey" all their interests in designated lands unequivocally demonstrated a collective intent to diminish the Great Sioux Reservation. See 430 U. S., at 591, n. 8. Both the legislative history of two subsequent allotment statutes and the presence of majority tribal consent to those land allotments established that this original intent to diminish was preserved. All parties agreed that the later statutes "must have diminished [the] reservation if the previous Act did." See *Solem,* 465 U. S., at 473, n. 15.

By contrast, the 1902 Act contains no equivalent language of diminishment, and none of the Acts at issue here were supported by Indian consent. Prior congressional attempts to open the Uintah Valley Reservation demonstrate that the requirement of the "consent thereto of the majority of the adult male Indians of the Uintah and the White River tribes" was central to the 1902 Act. 32 Stat. 263. In 1894, 1896, 1898, and 1902, Congress enacted statutes requiring Indian consent to open the Uintah Valley Reservation, but none of these Acts became effective because that consent was not forthcoming.[13] After the passage of the 1903 Act and the decision in *Lone Wolf,* Congress dispatched Inspector McLaughlin to negotiate the allotments with the Tribe. Throughout this period, the Ute Tribe resisted the allotments, twice sending delegations to Washington to voice their opposition. See *Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072, 1113, 1125 (Utah 1981). When Congress finally opened the Uintah Reservation to non-Indian settlement in 1905, it removed the public domain language from the opening statute and severely restricted non-Indian access to the opened lands. Even if the 1902 Act contained express language of termination, then, the facts of this case would much more closely mirror those in *Mattz,* 412 U. S., at 503–504, where Congress ultimately abandoned its prior attempts to "abolish" the reservation in favor of simply opening the lands to entry and settlement.

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[13] The Indian Appropriations Act of Aug. 15, 1894, ch. 290, §20, 28 Stat. 337, authorized a commission to allot the Uncompahgre Reservation unilaterally, but required that the same commission "negotiate and treat" with the Uintah Valley Reservation Indians for the relinquishment of their lands, "and if possible, procure [their] consent" to such allotments. See §22, *ibid.* A House Report explained that in contrast to the Uncompahgre Indians, who had "no title to the lands they occupy" and occupied them only temporarily, the Uintah Indians were "the owners of the lands within the reservation, because [the enabling Act] . . . provided that the lands within the Uintah Reservation should be 'set apart for the permanent

Concededly, nothing in the 1905 Act expressly repealed the 1902 Act's public domain language, and the 1905 Act could

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settlement and exclusive occupation of the Indians.'" H. R. Rep. No. 660, 53d Cong., 2d Sess., 1, 2–3 (1894), quoting Act of May 5, 1864, ch. 77, 13 Stat. 63. In order to allot the Uintah Reservation lands, therefore, it was "first necessary to obtain the consent of the Indians residing thereon." H. R. Rep. No. 660, at 3. The Act of June 10, 1896, ch. 398, 29 Stat. 341–342, and the Act of June 4, 1898, ch. 376, 30 Stat. 429, also conditioned opening of the reservation on Indian consent. See *Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072, 1111–1114 (Utah 1981) (discussing pre-1902 efforts to open the Uintah Reservation).

Congress rebuffed all subsequent attempts to allot the reservation unilaterally, see Hearings before the Senate Committee on Indian Affairs, S. Doc. No. 212, 57th Cong., 1st Sess., 111 (1902) (proposal of Rep. Sutherland of Utah), or to sever large portions of the reservation, see S. 145, 57th Cong., 1st Sess. (1902), reproduced in S. Doc. No. 212, at 3–4 (proposal of Sen. Rawlins of Utah). In hearings regarding the reservation in 1902, Indian Affairs Commissioner Jones testified: "There is a sort of feeling among the ignorant Indians that they do not want to lose any of their land. That is all there is to it; and I think before you can get them to agree . . . you have got to use some arbitrary means to open the land." *Id.,* at 5. Congress did not heed this advice, however, but again required the Ute Tribe's consent in the 1902 Act.

be construed as either preserving that provision or replacing it. Ordinarily under these circumstances, the canon that repeals by implication are disfavored might require us to construe the later Act's silence as consistent with the earlier statute. See *ante,* at 416. The Court's invocation of this canon here, however, "fails to appreciate . . . that the standard principles of statutory construction do not have their usual force in cases involving Indian law." *Montana* v. *Blackfeet Tribe,* 471 U. S. 759, 766 (1985).

In *Blackfeet Tribe,* the Court refused to rely on the rule against repeals by implication under circumstances analogous to those presented here. That case involved the question whether a 1924 provision authorizing States to tax tribal mineral royalties remained in force under a 1938 statute which was silent on the taxation question but which repealed all prior inconsistent provisions. The State argued that because the 1938 statute neither expressly repealed the earlier taxation provision nor was inconsistent with it, the rule against repeals by implication required a finding that the State's taxation power remained intact. The Court rejected this argument as, among other things, inconsistent with two fundamental canons of Indian law: that a State may tax Indians only when Congress has clearly expressed such an intent, and that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Ibid.* Cf. *Carpenter* v. *Shaw,* 280 U. S. 363, 366–367 (1930); *Choate* v. *Trapp,* 224 U. S. 665, 675 (1912).

A similar construction is required here. The 1905 Act does not purport to fulfill the "purposes" of the 1902 Act nor to preserve its public domain language; the Act instead simply opens the lands for settlement under the homestead and townsite laws. Under these circumstances, both the requirements that congressional intent must be explicit and that ambiguous provisions must be construed in favor of the Indians compel a resolution in favor of petitioner Hagen. Although a "canon of construction is not a license to disregard clear expressions of tribal and congressional intent," *DeCoteau,* 420 U. S., at 447, no such clear expression is evident here.

B

The legislative history of the 1905 Act supports the conclusion that Congress materially altered the operative language in the 1902 Act by deleting the public domain provision. Like the 1902 Act, the House version of the 1905 bill, H. R. 17474, provided "[t]hat so much of said lands as will be under the provisions of said acts *restored to the public domain* shall be open to settlement and entry" under the general land laws. 39 Cong. Rec. 1180 (1905) (emphasis added). Representative Howell of Utah, in a proposed amendment that was *not* ultimately adopted, sought to limit non-Indian entry under this bill "to entry only under the homestead, town-site, and mining laws of the United States." *Ibid.* Howell's proposal, however, would have referred to the public domain in two places:

> "so much of said lands as will be under the provisions of said acts *restored to the public domain* shall be open to settlement and entry by proclamation of the President. . . . *And further provided,* That for one year immediately following the *restoration of said lands to the public domain* said lands shall be subject to entry only under the homestead, town-site, and mining laws of the United States." *Ibid.* (emphasis added in part).

Senate bills later introduced by Senator Smoot of Utah, S. 6867 and S. 6868, 58th Cong., 3d Sess. (1905) (which ultimately were adopted in relevant part as the 1905 Act), also limited the opening to entry under the homestead and townsite laws but struck the House bill's public domain language. In its place, S. bill 6867 stated

> "[t]hat the time for *opening to public entry* the unallotted lands having been fixed by law . . . it is hereby provided that the *manner of opening* such lands for settle-

> ment and entry, and for disposing of the same shall be as follows: That the said unallotted lands . . . shall be disposed of under the general provisions of the homestead and town site laws of the United States" (emphasis added).

No subsequent attempt was made to reintroduce the public domain language into the Senate bills. When the House and Senate bills were submitted to the Conference Committee, the Committee again struck the House version containing the public domain language and replaced it with the Senate bill. See 39 Cong. Rec. 3919 (1905). Congress adopted this conference bill as the 1905 Act.

The legislative history thus demonstrates that Congress both removed the public domain language from the 1905 Act and restricted entry to the homestead and townsite laws. Although the Court attempts to dismiss the altered language of the 1905 Act as evidence that "Congress wanted to limit land speculation," *ante*, at 419, this reasoning explains only the presence of the homestead and townsite limitation; it does not explain Congress' simultaneous *deletion* of the public domain language. We do not know why this latter change was made. Possibly Congress thought the language had no substantive meaning at all; possibly the deletion was a response to the Indians' continued withholding of consent, or it is possible that opening lands under the homestead and townsite laws was incompatible with their restoration to the public domain and thus to sale "under general laws." See *Newhall* v. *Sanger*, 92 U. S., at 763. We do know, however, that we must construe doubt regarding Congress' intent to the Indians' benefit when we are left, as we are here, without the "clear statement of congressional intent to alter reservation boundaries," necessary for a finding of diminishment. *Solem*, 465 U. S., at 478.

President Theodore Roosevelt's Proclamation shed no competing light on Congress' intent, but simply summarized the language of the allotment statutes. The operative portion of the Proclamation declared that "all the unallotted lands" would "in the manner hereinafter prescribed, and not otherwise, be opened to entry, settlement and disposition under the general provisions of the homestead and townsite laws." 34 Stat. 3120. Thus, the crucial portion of the Proclamation under which the lands actually were opened restricted the opening to the terms of the 1905 Act. Furthermore, all other contemporaneous Presidential Proclamations regarding the reservation universally referred to the 1905 Act rather than the 1902 Act as the opening authority. See Presidential Proclamation of July 14, 1905, 34 Stat. 3116 (Uintah forest reserve); Proclamation of Aug. 3, 1905, 34 Stat. 3141 (Uintah reservoir and agricultural lands); Proclamation of Aug. 14, 1905, 34 Stat. 3143 (townsites); Proclamation of Aug. 14, 1905, 34 Stat. 3143–3144 (reservoir lands).

C

Although contemporary demographics and the historical exercise of jurisdiction may provide "one additional clue as to what Congress expected" in opening reservation lands, *Solem*, 465 U. S., at 472, in that case, we unanimously agreed:

> "There are, of course, limits to how far we will go to decipher Congress' intention in any particular surplus land Act. *When both an Act and its legislative history fail to provide substantial and compelling evidence of a congressional intention to diminish Indian lands,* we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening. *Mattz* v. *Arnett,* 412 U. S., at 505; *Seymour* v. *Superintendent,* 368 U. S. 351 (1962)." 465 U. S., at 472 (emphasis added).

Absent other plain and unambiguous evidence of a congressional intent, we never have relied upon contemporary demographic or jurisdictional considerations to find diminishment. Cf. *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584 (1977). While these factors may support a finding of diminishment where congressional intent already is clear, therefore, the Court properly does not contend that they may be controlling where Congress' purpose is ambiguous.

Aside from their tangential relation to historical congressional intent, there are practical reasons why we are unwilling to rely heavily on such criteria. The history of the western United States has been characterized, in part, by state attempts to exert jurisdiction over Indian lands. Cf. *United States* v. *Kagama*, 118 U. S. 375, 384 (1886) ("[The Indians] owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their deadliest enemies"). And the exercise of state jurisdiction here has not been uncontested. The Constitution of the Ute Indian Tribe, which was approved by the Secretary of the Interior in 1937, defines the Tribe's jurisdiction as extending "to the territory within the original confines of the Uintah and Ouray Reservation," quoted in *Ute Indian Tribe*, 521 F. Supp., at 1075. See also Ute Law and Order Code § 1–2–2 (1975), set forth in *Ute Indian Tribe*, 521 F. Supp., at 1077, n. 8. More than two decades ago, *amicus* Roosevelt City agreed to the limited exercise of tribal jurisdiction within its city limits. See Memorandum of Agreement between Roosevelt City and the Ute Tribe, Jan. 11, 1972, cited in *Ute Indian Tribe*, 521 F. Supp., at 1077, n. 8. Federal agencies also have provided services to Indians residing in the disputed areas for many years. In fact, after reviewing the substantial jurisdictional contradictions and confusion in the record on this question, the District Court in *Ute Indian Tribe* concluded: "One thing is certain: the jurisdictional history of the Uintah and Ouray Reservation is not one of 'unquestioned' exercise of state authority." *Id.*, at 1146.

IV

One hundred thirty years ago, Congress designated the Uintah Valley Reservation "for the permanent settlement and exclusive occupation of" the Ute Indians. Act of May 5, 1864, ch. 77, 13 Stat. 63. The 1905 opening of the reservation constituted a substantial breach of Congress' original promise, but that opening alone is insufficient to extinguish the Ute Tribe's jurisdiction. Nothing in the "face of the Act," its "surrounding circumstances," or its "legislative history" establishes a clear congressional purpose to diminish the Uintah Reservation. *DeCoteau,* 420 U. S., at 445 (internal quotation marks omitted). I appreciate that jurisdiction often may not be neatly parsed among the States and Indian tribes, but this is the inevitable burden of the path this Nation has chosen. Under our precedents, the lands where petitioner's offense occurred are Indian country, and the State of Utah lacked jurisdiction to try him for that crime. See 18 U. S. C. § 1151.

I respectfully dissent.

AMERICAN DREDGING CO. *v.* MILLER

CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 91–1950. Argued November 9, 1993—Decided February 23, 1994

After respondent was injured while working as a seaman on a tug operating on the Delaware River and owned by petitioner, a Pennsylvania corporation with its principal place of business in New Jersey, he filed this action in a Louisiana state court pursuant to the "saving to suitors clause," 28 U. S. C. § 1333(1), seeking damages under the Jones Act, 46 U. S. C. App. § 688, and relief under general maritime law. The trial court granted petitioner's motion to dismiss under the doctrine of *forum non conveniens,* holding that it was bound to apply that doctrine by federal maritime law. The Court of Appeal affirmed, but the Supreme Court of Louisiana reversed, holding that a state statute rendering the doctrine of *forum non conveniens* unavailable in Jones Act and maritime law cases brought in state court is not pre-empted by federal maritime law.

Held: In admiralty cases filed in a state court under the Jones Act and the "saving to suitors clause," federal law does not pre-empt state law regarding the doctrine of *forum non conveniens.* Pp. 446–457.

(a) In exercising *in personam* jurisdiction over maritime actions under the "saving to suitors clause," a state court may adopt such remedies, and attach to them such incidents, as it sees fit, so long as those remedies do not "wor[k] material prejudice to the characteristic features of the general maritime law or interfer[e] with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, 216. Pp. 446–447.

(b) Because *forum non conveniens* did not originate in admiralty or have exclusive application there, but has long been a doctrine of general application, Louisiana's refusal to apply it does not work "material prejudice to [a] characteristic featur[e] of the general maritime law" within *Jensen*'s meaning. Pp. 447–450.

(c) Nor is *forum non conveniens* a doctrine whose uniform application is necessary to maintain "the proper harmony" of maritime law under *Jensen,* 244 U. S., at 216. The uniformity requirement is not absolute; the general maritime law may be changed to some extent by state legislation. See *ibid. Forum non conveniens* is in two respects quite dissimilar from any other matter that this Court's opinions have held to be pre-empted by federal admiralty law: First, it is a sort of venue rule—procedural in nature—rather than a substantive rule upon which maritime actors rely in making decisions about how to manage their business. Second, it is most unlikely ever to produce uniform results, since the doctrine vests great discretion in the trial court, see, *e. g., Piper Aircraft Co.* v. *Reyno,* 454 U. S. 235, 257, and acknowledges multifarious factors as being relevant to its application, see *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501, 508–509. Pp. 450–455.

(d) The foregoing conclusion is strongly confirmed by examination of federal legislation. The Jones Act permits state courts to apply their local *forum non conveniens* rules. See 46 U. S. C. App. § 688(a); *Missouri ex rel. Southern R. Co.* v. *Mayfield,* 340 U. S. 1, 5. This supports the view that maritime commerce in general does not require a uniform rule on the subject. The implication of the Court's holding in *Bainbridge* v. *Merchants & Miners Transp. Co.,* 287 U. S. 278, 280–281—that although § 688(a) contains a venue provision, Jones Act venue in state court should be determined in accordance with state law—is that federal venue rules in maritime actions are a matter of judicial housekeeping, prescribed only for the federal courts. Pp. 455–457.

595 So. 2d 615, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, O'CONNOR, SOUTER, and GINSBURG, JJ., joined, and in Part II–C of which STEVENS, J., joined. SOUTER, J., filed a concurring opinion, *post,* p. 457. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, *post,* p. 458. KENNEDY, J., filed a dissenting opinion, in which THOMAS, J., joined, *post,* p. 462.

Thomas J. Wagner argued the cause for petitioner. With him on the briefs was *Whitney L. Cole.*

Timothy J. Falcon argued the cause for respondent. With him on the brief were *Stephen M. Wiles, John Hunter,* and *James A. George.*

John F. Manning argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger,* and *Acting Deputy Solicitor General Kneedler.**

**Lizabeth L. Burrell* and *George W. Healy III* filed a brief for the Maritime Law Association of the United States as *amicus curiae* urging reversal.

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether, in admiralty cases filed in a state court under the Jones Act, 46 U. S. C. App. § 688, and the "saving to suitors clause," 28 U. S. C. § 1333(1), federal law pre-empts state law regarding the doctrine of *forum non conveniens.*

I

Respondent William Robert Miller, a resident of Mississippi, moved to Pennsylvania to seek employment in 1987. He was hired by petitioner American Dredging Company, a Pennsylvania corporation with its principal place of business in New Jersey, to work as a seaman aboard the MV *John R.*, a tug operating on the Delaware River. In the course of that employment respondent was injured. After receiving medical treatment in Pennsylvania and New York, he returned to Mississippi where he continued to be treated by local physicians.

On December 1, 1989, respondent filed this action in the Civil District Court for the Parish of Orleans, Louisiana. He sought relief under the Jones Act, which authorizes a seaman who suffers personal injury "in the course of his employment" to bring "an action for damages at law," 46 U. S. C. App. § 688(a), and over which state and federal courts have concurrent jurisdiction. See *Engel* v. *Davenport*, 271 U. S. 33, 37 (1926). Respondent also requested relief under general maritime law for unseaworthiness, for wages, and for maintenance and cure. See *McAllister* v. *Magnolia Petroleum Co.*, 357 U. S. 221, 224 (1958) (setting forth means of recovery available to injured seaman).

The trial court granted petitioner's motion to dismiss the action under the doctrine of *forum non conveniens*, holding that it was bound to apply that doctrine by federal maritime law. The Louisiana Court of Appeal for the Fourth District affirmed. 580 So. 2d 1091 (1991). The Supreme Court of Louisiana reversed, holding that Article 123(C) of the Louisiana Code of Civil Procedure, which renders the doctrine of *forum non conveniens* unavailable in Jones Act and maritime law cases brought in Louisiana state courts, is not preempted by federal maritime law. 595 So. 2d 615 (1992). American Dredging Company filed a petition for a writ of certiorari, which we granted. 507 U. S. 1028 (1993).

II

The Constitution provides that the federal judicial power "shall extend . . . to all Cases of admiralty and maritime Jurisdiction." U. S. Const., Art. III, § 2, cl. 1. Federal-court jurisdiction over such cases, however, has never been entirely exclusive. The Judiciary Act of 1789 provided:

> "That the district courts shall have, exclusively of the courts of the several States . . . exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . within their respective districts as well as upon the high seas; *saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it.*" § 9, 1 Stat. 76–77 (emphasis added).

The emphasized language is known as the "saving to suitors clause." This provision has its modern expression at 28 U. S. C. § 1333(1), which reads (with emphasis added):

> "The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> "(1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.*"

We have held it to be the consequence of exclusive federal jurisdiction that state courts "may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction." *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109, 124 (1924). An *in rem* suit against a vessel is, we have said, distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts. *The Moses Taylor,* 4 Wall. 411, 431 (1867). In exercising *in personam* jurisdiction, however, a state court may "'adopt such remedies, and . . . attach to them such incidents, as it sees fit' so long as it does not attempt to make changes in the 'substantive maritime law.'" *Madruga* v. *Superior Court of Cal., County of San Diego,* 346 U. S. 556, 561 (1954) (quoting *Red Cross Line, supra,* at 124). That proviso is violated when the state remedy "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, 216 (1917). The issue before us here is whether the doctrine of *forum non conveniens* is either a "characteristic feature" of admiralty or a doctrine whose uniform application is necessary to maintain the "proper harmony" of maritime law. We think it is neither.[1]

A

Under the federal doctrine of *forum non conveniens,* "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case," even if jurisdiction and proper venue are established. *Piper Aircraft Co.* v. *Reyno,* 454 U. S. 235, 241 (1981) (quoting *Koster* v. *(American) Lumbermens Mut. Casualty Co.,* 330 U. S. 518, 524 (1947)). In *Gulf Oil Corp.* v. *Gilbert,* 330 U. S. 501 (1947), Justice Jackson described some of the multifarious factors relevant to the *forum non conveniens* determination:

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[1] JUSTICE STEVENS asserts that we should not test the Louisiana law against the standards of *Jensen,* a case which, though never explicitly overruled, is in his view as discredited as *Lochner* v. *New York,* 198 U. S. 45 (1905). See *post,* at 458–459. Petitioner's pre-emption argument was primarily based upon the principles established in *Jensen,* as repeated in the later cases (which JUSTICE STEVENS also disparages, see *post,* at 459) of *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149 (1920), and *Washington* v. *W. C. Dawson & Co.,* 264 U. S. 219 (1924), see Brief for Petitioner 12–13. Respondent did not assert that those principles had been repudiated; nor did the Solicitor General, who, in support of respondent, discussed *Jensen* at length, see Brief for United States as *Amicus Curiae* 5, 11–13, and n. 12. Since we ultimately find that the Louisiana law meets the standards of *Jensen* anyway, we think it inappropriate to overrule *Jensen* in dictum, and without argument or even invitation.

> "An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility *[sic]* of a judgment if one is obtained. . . .
>
> "Factors of public interest also have [a] place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a

court in some other forum untangle problems in conflict of laws, and in law foreign to itself." *Id.*, at 508–509.[2]

Although the origins of the doctrine in Anglo-American law are murky, most authorities agree that *forum non conveniens* had its earliest expression not in admiralty but in Scottish estate cases. See *Macmaster* v. *Macmaster*, 11 Sess. Cas. 685, 687 (No. 280) (2d Div. Scot.) (1833); *McMorine* v. *Cowie*, 7 Sess. Cas. (2d ser.) 270, 272 (No. 48) (1st Div. Scot.) (1845); *La Société du Gaz de Paris* v. *La Société Anonyme de Navigation "Les Armateurs Français,"* [1926] Sess. Cas. (H. L.) 13 (1925). See generally Speck, Forum Non Conveniens and Choice of Law in Admiralty: Time for an Overhaul, 18 J. Mar. L. & Com. 185, 187 (1987); Barrett, The Doctrine of *Forum Non Conveniens*, 35 Calif. L. Rev. 380, 386–387 (1947); Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 909 (1947); but see Dainow, The Inappropriate Forum, 29 Ill. L. Rev. 867, 881, n. 58 (1935) (doctrine in Scotland was "borrowed" from elsewhere before middle of 19th century).

Even within the United States alone, there is no basis for regarding *forum non conveniens* as a doctrine that originated in admiralty. To be sure, within federal courts it may have been given its earliest and most frequent expression in admiralty cases. See *The Maggie Hammond*, 9 Wall. 435, 457 (1870); *The Belgenland*, 114 U. S. 355, 365–366 (1885).

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[2] *Gilbert* held that it was permissible to dismiss an action brought in a District Court in New York by a Virginia plaintiff against a defendant doing business in Virginia for a fire that occurred in Virginia. Such a dismissal would be improper today because of the federal venue transfer statute, 28 U. S. C. § 1404(a): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." By this statute, "[d]istrict courts were given more discretion to transfer . . . than they had to dismiss on grounds of *forum non conveniens*." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 253 (1981). As a consequence, the federal doctrine of *forum non conveniens* has continuing application only in cases where the alternative forum is abroad.

But the doctrine's application has not been unique to admiralty. When the Court held, in *Gilbert, supra,* that *forum non conveniens* applied to all federal diversity cases, Justice Black's dissent argued that the doctrine had been applied in maritime cases "[f]or reasons peculiar to the special problems of admiralty." *Id.*, at 513. The Court disagreed, reciting a long history of valid application of the doctrine by state courts, both at law and in equity. *Id.*, at 504–505, and n. 4. It observed that the problem of plaintiffs' misusing venue to the inconvenience of defendants "is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it." *Id.*, at 507. Our most recent opinion dealing with *forum non conveniens, Piper Aircraft Co.* v. *Reyno,* 454 U. S. 235 (1981), recognized that the doctrine "originated in Scotland, and became part of the common law of many States," *id.*, at 248, n. 13 (citation omitted), and treated the *forum non conveniens* analysis of *Canada Malting Co.* v. *Paterson S. S., Ltd.*, 285 U. S. 413 (1932), an admiralty case, as binding precedent in the nonadmiralty context.

In sum, the doctrine of *forum non conveniens* neither originated in admiralty nor has exclusive application there. To the contrary, it is and has long been a doctrine of general application. Louisiana's refusal to apply *forum non conveniens* does not, therefore, work "material prejudice to [a] characteristic featur[e] of the general maritime law." *Southern Pacific Co.* v. *Jensen,* 244 U. S., at 216.

B

Petitioner correctly points out that the decision here under review produces disuniformity. As the Fifth Circuit noted in *Ikospentakis* v. *Thalassic S. S. Agency,* 915 F. 2d 176, 179 (1990), maritime defendants "have access to a *forum non conveniens* defense in federal court that is not presently recognized in Louisiana state courts." We must therefore consider whether Louisiana's rule "interferes with the proper harmony and uniformity" of maritime law, *Southern Pacific Co.* v. *Jensen, supra,* at 216.

In *The Lottawanna,* 21 Wall. 558, 575 (1875), Justice Bradley, writing for the Court, said of the Article III provision extending federal judicial power "to all Cases of admiralty and maritime Jurisdiction":

> "One thing . . . is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

By reason of this principle, we disallowed in *Jensen* the application of state workers' compensation statutes to injuries covered by the admiralty jurisdiction. Later, in *Knickerbocker Ice Co.* v. *Stewart,* 253 U. S. 149, 163–164 (1920), we held that not even Congress itself could permit such application and thereby sanction destruction of the constitutionally prescribed uniformity. We have also relied on the uniformity principle to hold that a State may not require that a maritime contract be in writing where admiralty law regards oral contracts as valid, *Kossick* v. *United Fruit Co.,* 365 U. S. 731 (1961).

The requirement of uniformity is not, however, absolute. As *Jensen* itself recognized: "[I]t would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied." 244 U. S., at 216. A later case describes to what breadth this "some extent" extends:

> "It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system[,] [b]ut this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions . . . have been upheld when applied to maritime causes of action. . . . State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance—all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 373–374 (1959) (footnotes omitted).

It would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible in our admiralty jurisprudence, or indeed is even entirely consistent within our admiralty jurisprudence. Compare *Kossick, supra* (state law cannot require provision of maritime contract to be in writing), with *Wilburn Boat Co.* v. *Fireman's Fund Ins. Co.*, 348 U. S. 310 (1955) (state law can determine effect of breach of warranty in marine insurance policy).[3] Happily, it is unnecessary to wrestle with that difficulty today. Wherever the boundaries of permissible state regulation may lie, they do not invalidate state rejection of *forum non conveniens*, which is in two respects quite dissimilar from any other matter that our opinions have held to be governed by federal admiralty law: it is procedural rather than substantive, and it is most unlikely to produce uniform results.

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[3] Whatever might be the unifying theme of this aspect of our admiralty jurisprudence, it assuredly is *not* what the dissent takes it to be, namely, the principle that the States may not impair maritime commerce, see *post*, at 463–464, 467. In *Fireman's Fund*, for example, we did not inquire whether the breach-of-warranty rule Oklahoma imposed would help or harm maritime commerce, but simply whether the State had power to regulate the matter. The no-harm-to-commerce theme that the dissent plays is of course familiar to the ear—not from our admiralty repertoire, however, but from our "negative Commerce Clause" jurisprudence, see

As to the former point: At bottom, the doctrine of *forum non conveniens* is nothing more or less than a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined. But venue is a matter that goes to process rather than substantive rights—determining which among various competent courts will decide the case. Uniformity of process (beyond the rudimentary elements of procedural fairness) is assuredly not what the law of admiralty seeks to achieve, since it is supposed to apply in all the courts of the world. Just as state courts, in deciding admiralty cases, are not bound by the venue requirements set forth for federal courts in the United States Code, so also they are not bound by the federal common-law venue rule (so to speak) of *forum non conveniens*. Because the doctrine is one of procedure rather than substance, petitioner is wrong to claim support from our decision in *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406 (1953), which held that Pennsylvania courts must apply the admi-

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Bendix Autolite Corp. v. *Midwesco Enterprises, Inc.*, 486 U. S. 888, 891 (1988). No Commerce Clause challenge is presented in this case.

Similarly misdirected is the dissent's complaint that Article 123 of the Louisiana Code of Civil Procedure unfairly discriminates against maritime defendants because it permits application of *forum non conveniens* in nonmaritime cases, see *post*, at 462–463. The only issue raised and argued in this appeal, and the only issue we decide, is whether state courts must apply the federal rule of *forum non conveniens* in maritime actions. Whether they may accord discriminatory treatment to maritime actions by applying a state *forum non conveniens* rule in all except maritime cases is a question not remotely before us.

ralty rule that contributory negligence is no bar to recovery. The other case petitioner relies on, *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 248–249 (1942), held that the traditional maritime rule placing the burden of proving the validity of a release upon the defendant pre-empts state law placing the burden of proving invalidity upon the plaintiff. In earlier times, burden of proof was regarded as "procedural" for choice-of-law purposes such as the one before us here, see, *e. g.*, *Levy* v. *Steiger*, 233 Mass. 600, 124 N. E. 477 (1919); Restatement of Conflict of Laws § 595 (1934). For many years, however, it has been viewed as a matter of substance, see *Cities Service Oil Co.* v. *Dunlap*, 308 U. S. 208, 212 (1939)—which is unquestionably the view that the Court took in *Garrett*, stating that the right of the plaintiff to be free of the burden of proof "inhered in his cause of action," "was a part of the very substance of his claim and cannot be considered a mere incident of a form of procedure." 317 U. S., at 249. Unlike burden of proof (which is a sort of default rule of liability) and affirmative defenses such as contributory negligence (which eliminate liability), *forum non conveniens* does not bear upon the substantive right to recover, and is not a rule upon which maritime actors rely in making decisions about primary conduct—how to manage their business and what precautions to take.[4]

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[4] It is because *forum non conveniens* is not a substantive right of the parties, but a procedural rule of the forum, that the dissent is wrong to say our decision will cause federal-court *forum non conveniens* determinations in admiralty cases to be driven, henceforth, by state law—*i. e.*, that the federal court in a State with the Louisiana rule may as well accept jurisdiction, since otherwise the state court will. See *post*, at 468–469. That is no more true of *forum non conveniens* than it is of venue. Under both doctrines, the object of the dimissal is achieved whether or not the party can then repair to a state court in the same location. Federal courts will continue to invoke *forum non conveniens* to decline jurisdiction in appropriate cases, whether or not the State in which they sit chooses to burden its judiciary with litigation better handled elsewhere.

But to tell the truth, *forum non conveniens* cannot really be *relied* upon in making decisions about secondary conduct—in deciding, for example, where to sue or where one is subject to being sued. The discretionary nature of the doctrine, combined with the multifariousness of the factors relevant to its application, see the quotation from *Gilbert*, *supra*, at 448–449, make uniformity and predictability of outcome almost impossible. "The *forum non conveniens* determination," we have said, "is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference." *Piper Aircraft Co.* v. *Reyno*, 454 U. S., at 257. We have emphasized that "'[e]ach case turns on its facts'" and have repeatedly rejected the use of *per se* rules in applying the doctrine. *Id.*, at 249; *Koster* v. *(American) Lumbermens Mut. Casualty Co.*, 330 U. S., at 527. In such a regime, one can rarely count on the fact that jurisdiction will be declined.

C

What we have concluded from our analysis of admiralty law in general is strongly confirmed by examination of federal legislation. While there is an established and continuing tradition of federal common lawmaking in admiralty, that law is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field. Foremost among those enactments in the field of maritime torts is the Jones Act, 46 U. S. C. App. § 688.

That legislation, which establishes a uniform federal law that state as well as federal courts must apply to the determination of employer liability to seamen, *Garrett*, *supra*, at 244, incorporates by reference "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees." 46

U. S. C. App. §688(a). Accordingly, we have held that the Jones Act adopts "the entire judicially developed doctrine of liability" under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. §51 *et seq. Kernan* v. *American Dredging Co.,* 355 U. S. 426, 439 (1958). More particularly, we have held that the Jones Act adopts the "uniformity requirement" of the FELA, requiring state courts to apply a uniform federal law. *Garrett, supra,* at 244. And—to come to the point of this excursus—despite that uniformity requirement we held in *Missouri ex rel. Southern R. Co.* v. *Mayfield,* 340 U. S. 1, 5 (1950), that a state court presiding over an action pursuant to the FELA "should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law." We declared *forum non conveniens* to be a matter of "local policy," *id.*, at 4, a proposition well substantiated by the local nature of the "public factors" relevant to the *forum non conveniens* determination. See *Reyno, supra,* at 241, and n. 6 (quoting *Gilbert,* 330 U. S., at 509).

We think it evident that the rule which *Mayfield* announced for the FELA applies as well to the Jones Act, which in turn supports the view that maritime commerce in general does not require a uniform rule of *forum non conveniens. Amicus* Maritime Law Association of the United States argues that "whether or not it is appropriate to analogize from FELA to the Jones Act, *Mayfield* cannot save the result below because the Louisiana statute abolishes the *forum non conveniens* doctrine in *all* maritime cases, not just those arising under the Jones Act." Brief for Maritime Law Association as *Amicus Curiae* 16. It is true enough that the *Mayfield* rule does not operate *ex proprio vigore* beyond the field of the FELA and (by incorporation) the Jones Act. But harmonization of general admiralty law with congressional enactments would have little meaning if we were to hold that, though *forum non conveniens* is a local matter for purposes of the Jones Act, it is nevertheless a matter of global concern requiring uniformity under general maritime law. That is especially so in light of our recognition in *McAllister* v. *Magnolia Petroleum Co.*, 357 U. S., at 224–225, that, for practical reasons, a seaman will almost always combine in a single action claims for relief under the Jones Act and general maritime law. It would produce dissonance rather than harmony to hold that his claims for unseaworthiness and maintenance and cure, but not his Jones Act claim, could be dismissed for *forum non conveniens.*

The Jones Act's treatment of venue lends further support to our conclusion. In *Bainbridge* v. *Merchants & Miners Transp. Co.*, 287 U. S. 278, 280–281 (1932), we held that although 46 U. S. C. App. § 688(a) contains a venue provision, "venue [in Jones Act cases brought in state court] should . . . [be] determined by the trial court in accordance with the law of the state." The implication of that holding is that venue under the Jones Act is a matter of judicial housekeeping that has been prescribed only for the federal courts. We noted earlier that *forum non conveniens* is a sort of supervening venue rule—and here again, what is true for venue under the Jones Act should ordinarily be true under maritime law in general. What we have prescribed for the federal courts with regard to *forum non conveniens* is not applicable to the States.

* * *

Amicus the Solicitor General has urged that we limit our holding, that *forum non conveniens* is not part of the uniform law of admiralty, to cases involving domestic entities. We think it unnecessary to do that. Since the parties to this suit are domestic entities it is quite impossible for our holding to be any broader.

The judgment of the Supreme Court of Louisiana is

Affirmed.

JUSTICE SOUTER, concurring.

I join in the opinion of the Court because I agree that in most cases the characterization of a state rule as substantive or procedural will be a sound surrogate for the conclusion that would follow from a more discursive pre-emption analysis. The distinction between substance and procedure will, however, sometimes be obscure. As to those close cases, how a given rule is characterized for purposes of determining whether federal maritime law pre-empts state law will turn on whether the state rule unduly interferes with the federal interest in maintaining the free flow of maritime commerce.

JUSTICE STEVENS, concurring in part and concurring in the judgment.

It is common ground in the debate between the Court and JUSTICE KENNEDY that language from the majority opinion in *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205 (1917), correctly defines this Court's power to prevent state tribunals from applying state laws in admiralty cases. See *ante,* at 447, *post,* at 463. In my view, *Jensen* is just as untrustworthy a guide in an admiralty case today as *Lochner* v. *New York,* 198 U. S. 45 (1905), would be in a case under the Due Process Clause.

In the *Jensen* case, five Members of this Court concluded that the State of New York did not have the authority to award compensation to an injured longshoreman because application of the state remedy would interfere with the "proper harmony and uniformity" of admiralty law. 244 U. S., at 216. Justice Holmes' dissenting opinion in *Jensen,* no less eloquent than his famous dissent in *Lochner,* scarcely needs embellishment. See 244 U. S., at 218–223.[1] Nonetheless, like *Lochner* itself, *Jensen* has never been formally overruled. Indeed, in *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920), the same majority that decided *Jensen* reached the truly remarkable conclusion that even Congress could not authorize the States to apply their workmen's compensation laws in accidents subject to admiralty jurisdiction. See also *Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219 (1924).

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[1] The central theme of Holmes' dissent was that nothing in the Constitution or in the Judiciary Act's grant of jurisdiction over admiralty cases to the district courts prevented New York from supplementing the "very limited body of customs and ordinances of the sea" with its statutory workers' compensation remedy. *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205, 220 (1917). Holmes' *Jensen* dissent was the source of his famous observations that "judges do and must legislate, but they can do so only interstitially," *id.,* at 221, and that "[t]he common law is not a brooding omni-

As Justice Brandeis stated in dissent in *Washington*, it takes an extraordinarily long and tenuous "process of deduction" to find in a constitutional grant of judicial jurisdiction a strong federal pre-emption doctrine unwaivable even by Congress. See *id.*, at 230–231. *Jensen* and its progeny represent an unwarranted assertion of judicial authority to strike down or confine state legislation—even state legislation approved by Act of Congress—without any firm grounding in constitutional text or principle. In my view, we should not rely upon and thereby breathe life into this dubious line of cases.

Jensen asks courts to determine whether the state law would materially impair "characteristic features" of federal maritime law. 244 U. S., at 216. The unhelpful abstractness of those words leaves us without a reliable compass for navigating maritime pre-emption problems. As JUSTICE KENNEDY demonstrates, the *forum non conveniens* doctrine may be classified as a "characteristic feature" of federal admiralty jurisprudence even though it did not *originate in*, nor is it *exclusive to*, the law of admiralty. Compare *ante*, at 449–450, with *post*, at 463–467. There is, however, no respectable judicial authority for the proposition that every "characteristic feature" of federal maritime law must prevail over state law.

As JUSTICE KENNEDY observes, *post*, at 462–463, it is not easy to discern a substantial policy justification for Louisi-

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presence in the sky but the articulate voice of some sovereign or quasi-sovereign that can be identified," *id.*, at 222.

ana's selective "open forum" statute, which exempts only federal maritime and Jones Act claims from the State's general *forum non conveniens* policy. The statute arguably implicates concerns about disruptive local restrictions on maritime commerce that help explain why admiralty has been a federal subject. I am not persuaded, however, that the answer to those concerns lies in an extension of the patchwork maritime pre-emption doctrine. If this Court's maritime pre-emption rulings can be arranged into any pattern, it is a most haphazard one. See generally Currie, Federalism and the Admiralty: "The Devil's Own Mess," 1960 S. Ct. Rev. 158. Such a capricious doctrine is unlikely to aid the free flow of commerce, and threatens to have the opposite effect.

In order to decide this case, it is enough to observe that maritime pre-emption doctrine allows state courts to use their own procedures in saving clause and Jones Act cases, see *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207, 222–223 (1986), and that *forum non conveniens* is, as the Court observes, best classified as a kind of secondary venue rule.[2] Equally significant is the fact that Congress, which has unquestioned power to decree uniformity in maritime matters, has declined to set forth a federal forum convenience standard for admiralty cases. *Ante*, at 455–457. It also appears to have withheld from Jones Act defendants the right of removal generally applicable to claims based on federal law. See 28 U. S. C. § 1445(a); 46 U. S. C. App. § 688(a); *In re Dutile*, 935 F. 2d 61, 62 (CA5 1991). Congress may "determine whether uniformity of regulation is required or diversity is permissible." *Washington*, 264 U. S., at 234 (Brandeis, J., dissenting). When relevant federal legislation indicates that Congress has opted to permit state "diversity" in admiralty matters, a finding of federal pre-emption is inappropriate. Just as in cases involving non-maritime subjects, see, *e. g., Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 516 (1992), we should not lightly conclude that the federal law of the sea pre-empts a duly enacted state statute. Instead, we should focus on whether the state provision in question conflicts with some particular substantive rule of federal statutory or common law, or, perhaps, whether federal maritime rules, while not directly inconsistent, so pervade the subject as to preclude application of state law. We should jettison *Jensen*'s special maritime pre-emption doctrine and its abstract standards of "proper harmony" and "characteristic features."

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[2] Even if we were to impose a *forum non conveniens* rule on Louisiana, the resulting standard would be altogether different from the federal version because Louisiana has chosen to bear the various costs of entertaining far-flung claims. See *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, 508–509 (1947) (forum's own interests must be weighed in *forum non conveniens* balancing test). Instead, *forum non conveniens* would operate simply as an admonition to take heed of the inconvenience to the foreign defendant.

The *Jensen* decision and its progeny all rested upon the view that a strong pre-emption doctrine was necessary to vindicate the purpose of the Admiralty Clause to protect maritime commerce from the "unnecessary burdens and disadvantages incident to discordant legislation." *Knickerbocker Ice Co.*, 253 U. S., at 164. See also *Washington*, 264 U. S., at 228; *Jensen*, 244 U. S., at 217. Whether or not this view of the Clause is accurate as a historical matter, see Castro, The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers and Pirates, 37 Am. J. Legal Hist. 117, 154 (1993) (original purpose of Clause was to ensure federal jurisdiction over prize, criminal, and revenue cases; private maritime disputes were viewed as matters for state courts), protection of maritime commerce has been a central theme in our admiralty jurisprudence. While I do not propose that we abandon commerce as a guiding concern, we should recognize that, today, the federal interests in free trade and uniformity are amply protected by other means. Most importantly, we now recognize Congress' broad authority under the Commerce Clause to supplant state law with uniform federal statutes. Moreover, state laws that affect maritime commerce, interstate and foreign, are subject to judicial scrutiny under the Commerce Clause. And to the extent that the mere assertion of state judicial power may threaten maritime commerce, the Due Process Clause provides an important measure of protection for out-of-state defendants, especially foreigners. See *Asahi Metal Industry Co.* v. *Superior Court of Cal., Solano Cty.,* 480 U. S. 102 (1987); *Helicopteros Nacionales de Colombia, S. A.* v. *Hall,* 466 U. S. 408 (1984).[3] Extension of the ill-advised doctrine of *Jensen* is not the appropriate remedy for unreasonable state venue rules.

Accordingly, I concur in the judgment and in Part II–C of the opinion of the Court.

JUSTICE KENNEDY, with whom JUSTICE THOMAS joins, dissenting.

The Court gives a careful and comprehensive history of the *forum non conveniens* doctrine but, in my respectful view, draws the wrong conclusions from this account and from our precedents. Today's holding contradicts two just and well-accepted principles of admiralty law: uniformity and the elimination of unfair forum selection rules. When hearing cases governed by the federal admiralty and maritime law, the state courts, to be sure, have broad discretion to reject a *forum non conveniens* motion. They should not be permitted, however, to disregard the objection altogether. With due respect, I dissent.

Neither the Court nor respondent is well positioned in this case to contend that the State has some convincing reason to outlaw the *forum non conveniens* objection. For the fact is, though the Court seems unimpressed by the irony, the State of Louisiana commands its courts to entertain the *forum non conveniens* objection in all federal civil cases except for admiralty, the very context in which the rule is most prominent and makes most sense. Compare La. Code Civ. Proc. Ann., Art. 123(B) (West Supp. 1993) ("Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice . . .") with Art. 123(C) ("The provisions of Paragraph B shall not apply to claims brought pursuant to 46 U. S. C. § 688 [the Jones Act] or federal maritime law"). Louisiana's expressed interest is to reach out to keep maritime defendants, but not other types of defendants, within its borders, no matter how inconvenient the forum. This state interest is not the sort that should justify any disuniformity in our national admiralty law.

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[3] Petitioner asserted such a defense in the trial court, but has not asserted a personal jurisdiction challenge before this Court.

In all events, the Court misapprehends the question it should confront. The issue here is not whether *forum non conveniens* originated in admiralty law, or even whether it is unique to that subject, but instead whether it is an important feature of the uniformity and harmony to which admiralty aspires. See *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 216 (1917). From the historical evidence, there seems little doubt to me that *forum non conveniens* is an essential and salutary feature of admiralty law. It gives shipowners and ship operators a way to avoid vexatious litigation on a distant and unfamiliar shore. By denying this defense in all maritime cases, Louisiana upsets international and interstate comity and obstructs maritime trade. And by sanctioning Louisiana's law, a rule explicable only by some desire to disfavor maritime defendants, the Court condones the forum shopping and disuniformity that the admiralty jurisdiction is supposed to prevent.

In committing their ships to the general maritime trade, owners and operators run an unusual risk of being sued in venues with little or no connection to the subject matter of the suit. A wage dispute between crewman and captain or an accident on board the vessel may erupt into litigation when the ship docks in a faraway port. Taking jurisdiction in these cases, instead of allowing them to be resolved when the ship returns home, disrupts the schedule of the ship and may aggravate relations with the State from which it hales. See Bickel, The Doctrine of Forum Non Conveniens As Applied in the Federal Courts in Matters of Admiralty, 35 Cornell L. Q. 12, 20–21 (1949) ("[H]olding a ship and its crew in an American port, to which they may have come to do no more than refuel, may, in the eyes of the nation of the flag be deemed an undue interference with her commerce, and a violation of that 'comity and delicacy' which in the more courtly days of some of the earlier cases were considered normal among the nations" (footnote omitted)).

From the beginning, American admiralty courts have confronted this problem through the *forum non conveniens* doctrine. As early as 1801, a Pennsylvania District Court declined to take jurisdiction over a wage dispute between a captain and crewman of a Danish ship. *Willendson* v. *Forsoket,* 29 F. Cas. 1283 (No. 17,682) (Pa.). "It has been my general rule," explained the court, "not to take cognizance of disputes between the masters and crews of foreign ships." *Id.,* at 1284. "Reciprocal policy, and the justice due from one friendly nation to another, calls for such conduct in the courts of either country." *Ibid.*

Dismissals for reasons of comity and *forum non conveniens* were commonplace in the 19th century. See, *e. g., The Infanta,* 13 F. Cas. 37, 39 (No. 7,030) (SDNY 1848) (dismissing claims for wages by two seamen from a British ship: "This court has repeatedly discountenanced actions by foreign seamen against foreign vessels not terminating their voyages at this port, as being calculated to embarrass commercial transactions and relations between this country and others in friendly relations with it"); *The Carolina,* 14 F. 424, 426 (La. 1876) (dismissing seaman's claim that he was beaten by his crewmates while on board a British ship; "for courts to entertain this and similar suits during a voyage which the parties had agreed to make at intermediate points at which the vessel might touch, would impose delays which might seriously and uselessly embarrass the commerce of a friendly power"); *The Montapedia,* 14 F. 427 (ED La. 1882) (dismissing suit by Chinese plaintiffs against a British ship); *The Walter D. Wallet,* 66 F. 1011 (SD Ala. 1895) (dismissing suit by British seaman against master of British ship for costs of medical care while in a United States marine hospital). The practice had the *imprimatur* of this Court. See *Mason* v. *Ship Blaireau,* 2 Cranch 240, 264 (1804) (Marshall, C. J.) (recognizing *forum non conveniens* doctrine but not applying it in that case); *The Belgenland,* 114 U. S. 355, 362–369 (1885) (same); *Charter Shipping Co.* v. *Bowring, Jones & Tidy, Ltd.,* 281 U. S. 515, 517 (1930) (affirming *forum non conveniens* dismissal of maritime dispute between British firms). By 1932, Justice Brandeis was able to cite "an unbroken line of decisions in the lower federal courts" exercising "an unqualified discretion to decline jurisdiction in suits in admiralty between foreigners." *Canada Malting Co.* v. *Paterson S. S., Ltd.,* 285 U. S. 413, 421–422, and nn. 2–4 (affirming *forum non conveniens* dismissal of maritime dispute between Canadian shipping companies).

Long-time foreign trading partners also recognize the *forum non conveniens* doctrine. The Court notes the doctrine's roots in Scotland. See *La Société du Gaz de Paris* v. *La Société Anonyme de Navigation "Les Armateurs Français,"* [1926] Sess. Cas. 13 (H. L. 1925) (affirming dismissal of breach of contract claim brought by French manufacturer against French shipowner who had lost the manufacturer's cargo at sea). English courts have followed Scotland, although most often they stay the case rather than dismiss it. See *The Atlantic Star,* [1974] App. Cas. 436 (H. L. 1973) (staying action between a Dutch barge owner and a Dutch shipowner whose vessels had collided in Belgian waters, pending the outcome of litigation in Antwerp); *The Po,* [1990] 1 Lloyd's Rep. 418 (Q. B. Adm. 1990) (refusing to stay action between Italian shipowner and American shipowner whose vessels had collided in Brazilian waters); *The Lakhta,* [1992] 2 Lloyd's Rep. 269 (Q. B. Adm. 1992) (staying title dispute between Latvian plaintiffs and Russian defendant, so that plaintiffs could sue in Russian court). The Canadian Supreme Court has followed England and Scotland. See *Antares Shipping Corp.* v. *Delmar Shipping Ltd. (The Capricorn),* [1977] 1 Lloyd's Rep. 180, 185 (1976) (citing *Atlantic Star* and *Société du Gaz*).

From all of the above it should be clear that *forum non conveniens* is an established feature of the general maritime law. To the main point, it serves objectives that go to the vital center of the admiralty pre-emption doctrine. Comity with other nations and among the States was a primary aim of the Constitution. At the time of the framing, it was essential that our prospective foreign trading partners know that the United States would uphold its treaties, respect the general maritime law, and refrain from erecting barriers to commerce. The individual States needed similar assurances from each other. See The Federalist No. 22, pp. 143–145 (C. Rossiter ed. 1961) (Hamilton); Madison, Vices of the Political System of the United States, 2 Writings of James Madison 362–363 (G. Hunt ed. 1901). Federal admiralty and maritime jurisdiction was the solution. See 2 J. Story, Commentaries on the Constitution of the United States § 1672 (5th ed. 1833); The Federalist No. 80, *supra,* at 478 (Hamilton). And so, when the States were allowed to provide common-law remedies for *in personam* maritime disputes through the saving to suitors clause, it did not follow that they were at liberty to set aside the fundamental features of admiralty law. "The confusion and difficulty, if vessels were compelled to comply with the local statutes at every port, are not difficult to see. . . . [T]he Union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control." *Washington* v. *W. C. Dawson & Co.,* 264 U. S. 219, 228 (1924). Accord, *The Lottawanna,* 21 Wall. 558, 575 (1875); *Jensen,* 244 U. S., at 215–217.

Louisiana's open forum policy obstructs maritime commerce and runs the additional risk of impairing relations among the States and with our foreign trading partners. These realities cannot be obscured by characterizing the defense as procedural. See *ante,* at 452–454; but see Bickel, 35 Cornell L. Q., at 17 ("[T]he *forum non conveniens* problem . . . is inescapably connected with the substantive rights of the parties in any given type of suit, rather than . . . 'merely' an 'administrative' problem"). The reverse-*Erie* metaphor, while perhaps of use in other contexts, see *Offshore Logistics, Inc.* v. *Tallentire,* 477 U. S. 207, 222–223 (1986), is not a sure guide for determining when a specific state law has displaced an essential feature of the general maritime law. See *Exxon Corp.* v. *Chick Kam Choo,* 817 F. 2d 307, 319 (CA5 1987) ("drawing conclusions from metaphors is dangerous"). Procedural or substantive, the *forum non conveniens* defense promotes comity and trade. The States are not free to undermine these goals.

It is true that in *Missouri ex rel. Southern R. Co.* v. *Mayfield,* 340 U. S. 1 (1950), we held the state courts free to ignore *forum non conveniens* in Federal Employers' Liability Act (FELA) cases. But we did not consider the maritime context. Unlike FELA, a domestic statute controlling domestic markets, the admiralty law is international in its concern. A state court adjudicating a FELA dispute interposes no obstacle to our foreign relations. And while the Jones Act in turn makes FELA available to maritime claimants, that Act says nothing about *forum non conveniens.* See 46 U. S. C. App. § 688.

In any event, the Court's ruling extends well beyond the Jones Act; it covers the whole spectrum of maritime litigation. Courts have recognized the *forum non conveniens* defense in a broad range of admiralty disputes: breach of marine insurance contract, *Calavo Growers of Cal.* v. *Generali Belgium,* 632 F. 2d 963 (CA2 1980); collision, *Ocean Shelf Trading, Inc.* v. *Flota Mercante Grancolumbiana S. A.,* 638 F. Supp. 249 (SDNY 1986); products liability, *Matson Navigation Co.* v. *Stal-Laval Turbin AB,* 609 F. Supp. 579 (ND Cal. 1985); cargo loss, *The Red Sea Ins. Co.* v. *S. S. Lucia Del Mar,* 1983 A. M. C. 1630 (SDNY 1982), aff'd, 1983 A. M. C. 1631 (CA2 1983); and breach of contract for carriage, *Galban Lobo Trading Co.* v. *Canadian Leader Ltd.,* 1963 A. M. C. 988 (SDNY 1958), to name a few. See Brief for Maritime Law Association of the United States as *Amicus Curiae* 12. In all of these cases, federal district courts will now hear *forum non conveniens* motions in the shadow of state courts that refuse to consider it. Knowing that upon dismissal a maritime plaintiff may turn around and sue in one of these state courts, see *Chick Kam Choo* v. *Exxon Corp.,* 486 U. S. 140 (1988), a federal court is now in a most difficult position. May it overrule a *forum non conveniens* motion it otherwise would have granted, because the state forum is open? See *Ikospentakis* v. *Thalassic S. S. Agency,* 915 F. 2d 176, 180 (CA5 1990) (reversing the grant of plaintiff's voluntary dismissal motion, because the *forum non conveniens* defense was not available to defendants in the Louisiana court where plaintiff had also sued; refusing "to insist that these foreign appellants become guinea pigs in an effort to overturn Louisiana's erroneous rule"). Since the Court now makes *forum non conveniens* something of a derelict in maritime law, perhaps it is unconcerned that federal courts may now be required to alter their own *forum non conveniens* determinations to accommodate the policy of the State in which they sit. Under federal maritime principles, I should have thought that the required accommodation was the other way around. The Supreme Court of Texas so understood the force of admiralty; it has ruled that its state courts must entertain a *forum non conveniens* objection despite a Texas statute mandating an open forum. *Exxon Corp.* v. *Chick Kam Choo*, 1994 A. M. C. 609.

The Court does seem to leave open the possibility for a different result if those who raise the *forum non conveniens* objection are of foreign nationality. The Court is entitled, I suppose, to so confine its holding, but no part in its reasoning gives hope for a different result in a case involving foreign parties. The Court's substance-procedure distinction takes no account of the identity of the litigants, nor does the statement that *forum non conveniens* remains "nothing more or less than a supervening venue provision," *ante*, at 453. The Court ought to face up to the consequences of its rule in this regard.

Though it may be doubtful that a *forum non conveniens* objection will succeed when all parties are domestic, that conclusion should ensue from a reasoned consideration of all the relevant circumstances, including comity and trade concerns. See *Anderson* v. *Great Lakes Dredge & Dock Co.*, 411 Mich. 619, 309 N. W. 2d 539 (1981) (dismissing Jones Act claim brought by Florida seaman against Delaware dredge owner for injuries suffered in Florida); *Vargas* v. *A. H. Bull S. S. Co.*, 44 N. J. Super. 536, 131 A. 2d 39 (1957) (dismissing Jones Act claim brought by Puerto Rican residents against New Jersey shipper for accidents that occurred in Puerto Rico). An Alaskan shipper may find a lawsuit in Louisiana more burdensome than the same suit brought in Canada. It is a virtue, not a vice, that the doctrine preserves discretion for courts to find *forum non conveniens* in unusual but worthy cases. At stake here is whether the defense will be available at all, not whether it has merit in this particular case. Petitioner may not have prevailed on its *forum non* *conveniens* motion, but it should at least have a principled ruling on its objection.

For these reasons, I would reverse the judgment.

FEDERAL DEPOSIT INSURANCE CORPORATION *v.* MEYER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–741. Argued October 4, 1993—Decided February 23, 1994

After the Federal Savings and Loan Insurance Corporation (FSLIC), as receiver for a failing thrift institution, terminated respondent Meyer from his job as a senior officer of that institution, he filed this suit in the District Court, claiming that his summary discharge deprived him of a property right without due process of law in violation of the Fifth Amendment. In making this claim, he relied on *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 397, in which the Court implied a cause of action for damages against federal agents who allegedly violated the Fourth Amendment. The jury returned a verdict against FSLIC, whose statutory successor, petitioner Federal Deposit Insurance Corporation (FDIC), appealed. The Court of Appeals affirmed, holding that, although the Federal Tort Claims Act (FTCA) provides the exclusive remedy against the United States for all "claims which are cognizable under [28 U. S. C. §]1346(b)," Meyer's claim was not so cognizable; that the "sue-and-be-sued" clause contained in FSLIC's organic statute constituted a waiver of sovereign immunity for Meyer's claim and entitled him to maintain an action against FSLIC; and that he had been deprived of due process when he was summarily discharged without notice and a hearing.

Held:

1. FSLIC's sovereign immunity has been waived. Pp. 475–483.

(a) Meyer's constitutional tort claim is not "cognizable" under § 1346(b) because that section does not provide a cause of action for such a claim. A claim is actionable under the section if it alleges, *inter alia*, that the United States would be liable as "a private person" "in accordance with the law of the place where the act or omission occurred." A claim such as Meyer's could not contain such an allegation because the reference to the "law of the place" means law of the State, see, *e. g.*, *Miree* v. *DeKalb County*, 433 U. S. 25, 29, n. 4, and, by definition, federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right. Thus, the FTCA does not constitute Meyer's exclusive remedy, and his claim was properly brought against FSLIC. There simply is no basis in the statutory language for the interpretation suggested by FDIC, which would deem all claims "sounding in tort"—including constitutional torts—"cognizable" under § 1346(b). Pp. 475–479.

(b) FSLIC's sue-and-be-sued clause waives sovereign immunity for Meyer's constitutional tort claim. The clause's terms are simple and broad: FSLIC "shall have power . . . [t]o sue and be sued, complain and defend, in any court of competent jurisdiction in the United States." FDIC does not attempt to make the "clear" showing of congressional intent that is necessary to overcome the presumption that such a clause fully waives immunity. See, *e. g., Federal Housing Admin.* v. *Burr,* 309 U. S. 242, 245; *International Primate Protection League* v. *Administrators of Tulane Ed. Fund,* 500 U. S. 72, 86, n. 8. Instead, FDIC argues that the statutory waiver's scope should be limited to cases in which FSLIC would be subjected to liability as a private entity. This category would not include instances of constitutional tort. The cases on which FDIC relies, *Burr, supra, Loeffler* v. *Frank,* 486 U. S. 549, and *Franchise Tax Bd. of California* v. *Postal Service,* 467 U. S. 512, do not support the limitation suggested by FDIC. Pp. 480–483.

2. A *Bivens* cause of action cannot be implied directly against FSLIC. The logic of *Bivens* itself does not support the extension of *Bivens* from federal *agents* to federal *agencies.* In *Bivens,* the petitioner sued the agents of the Federal Bureau of Narcotics who allegedly violated his rights, not the Bureau itself, 403 U. S., at 389–390, and the Court implied a cause of action against the agents in part *because* a direct action against the Government was not available, *id.,* at 410 (Harlan, J., concurring in judgment). In essence, Meyer asks the Court to imply a damages action based on a decision that presumed the *absence* of that very action. Moreover, if the Court were to imply such an action directly against federal agencies, thereby permitting claimants to bypass the qualified immunity protection invoked by many *Bivens* defendants, there would no longer be any reason for aggrieved parties to bring damages actions against individual officers, and the deterrent effects of the *Bivens* remedy would be lost. Finally, there are "special factors counselling hesitation" in the creation of a damages remedy against federal agencies. Such a remedy would create a potentially enormous financial burden for the Federal Government, a matter affecting fiscal policy that is better left to Congress. Pp. 483–486.

944 F. 2d 562, reversed.

THOMAS, J., delivered the opinion for a unanimous Court.

Deputy Solicitor General Bender argued the cause for petitioner. On the briefs were *Solicitor General Days, Act-*

ing Solicitor General Bryson, Acting Assistant Attorney General Schiffer, James A. Feldman, Barbara L. Herwig, Jacob M. Lewis, Alfred J. T. Byrne, Jack D. Smith, and *Jerome A. Madden.*

Gennaro A. Filice III argued the cause and filed a brief for respondent.*

JUSTICE THOMAS delivered the opinion of the Court.

In *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388 (1971), we implied a cause of action for damages against federal agents who allegedly violated the Constitution. Today we are asked to imply a similar cause of action directly against an agency of the Federal Government. Because the logic of *Bivens* itself does not support such an extension, we decline to take this step.

I

On April 13, 1982, the California Savings and Loan Commissioner seized Fidelity Savings and Loan Association (Fidelity), a California-chartered thrift institution, and appointed the Federal Savings and Loan Insurance Corporation (FSLIC) to serve as Fidelity's receiver under state law. That same day, the Federal Home Loan Bank Board appointed FSLIC to serve as Fidelity's receiver under federal law. In its capacity as receiver, FSLIC had broad authority to "take such action as may be necessary to put [the thrift] in a sound solvent condition." 48 Stat. 1259, as amended, 12 U. S. C. § 1729(b)(1)(A)(ii) (repealed 1989). Pursuant to its general policy of terminating the employment of a failed thrift's senior management, FSLIC, through its special representative Robert L. Pattullo, terminated respondent John H. Meyer, a senior Fidelity officer.

Approximately one year later, Meyer filed this lawsuit against a number of defendants, including FSLIC and Pat-

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**David W. Graves* and *Gary M. Laturno* filed a brief for the National Employment Lawyers Association as *amicus curiae* urging affirmance.

tullo, in the United States District Court for the Northern District of California. At the time of trial, Meyer's sole claim against FSLIC and Pattullo was that his summary discharge deprived him of a property right (his right to continued employment under California law) without due process of law in violation of the Fifth Amendment. In making this claim, Meyer relied upon *Bivens* v. *Six Unknown Fed. Narcotics Agents, supra,* which implied a cause of action for damages against federal agents who allegedly violated the Fourth Amendment. The jury returned a $130,000 verdict against FSLIC, but found in favor of Pattullo on qualified immunity grounds.

Petitioner Federal Deposit Insurance Corporation (FDIC), FSLIC's statutory successor,[1] appealed to the Court of Appeals for the Ninth Circuit, which affirmed. 944 F. 2d 562 (1991). First, the Court of Appeals determined that the Federal Tort Claims Act (FTCA or Act), 28 U. S. C. §§ 1346(b), 2671–2680, did not provide Meyer's exclusive remedy. 944 F. 2d, at 568–572. Although the FTCA remedy is "exclusive" for all "claims which are cognizable under section 1346(b)," 28 U. S. C. § 2679(a), the Court of Appeals decided that Meyer's claim was not cognizable under § 1346(b). 944 F. 2d, at 567, 572. The court then concluded that the "sue-and-be-sued" clause contained in FSLIC's organic statute, 12 U. S. C. § 1725(c)(4) (repealed 1989), constituted a waiver of sovereign immunity for Meyer's claim and entitled him to maintain an action against the agency. 944 F. 2d, at 566, 572. Finally, on the merits, the court affirmed the jury's conclusion that Meyer had been deprived of due process when he was summarily discharged without notice and a hearing. *Id.,* at 572–575. We granted certiorari to consider the validity of the damages award against FSLIC. 507 U. S. 983 (1993).[2]

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[1] See 12 U. S. C. § 1821(d) (1988 ed., Supp. IV). After FSLIC was abolished by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183, FDIC was substituted for FSLIC in this suit.

II

Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit. *Loeffler* v. *Frank*, 486 U. S. 549, 554 (1988); *Federal Housing Administration* v. *Burr*, 309 U. S. 242, 244 (1940). Sovereign immunity is jurisdictional in nature. Indeed, the "terms of [the United States'] consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States* v. *Sherwood*, 312 U. S. 584, 586 (1941). See also *United States* v. *Mitchell*, 463 U. S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction"). Therefore, we must first decide whether FSLIC's immunity has been waived.

A

When Congress created FSLIC in 1934, it empowered the agency "[t]o sue and be sued, complain and defend, in any court of competent jurisdiction." 12 U. S. C. § 1725(c)(4) (repealed 1989).[3] By permitting FSLIC to sue and be sued, Congress effected a "broad" waiver of FSLIC's immunity from suit. *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 34 (1992). In 1946, Congress passed the FTCA, which waived the sovereign immunity of the United States for certain torts committed by federal employees. 28 U. S. C.

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[2] Meyer filed a cross-appeal challenging the jury's finding that Pattullo was protected by qualified immunity. The Ninth Circuit affirmed this finding. 944 F. 2d, at 575–577. We declined to review this aspect of the case. *Meyer* v. *Pattullo*, 507 U. S. 984 (1993).

[3] The statute governing FDIC contains a nearly identical sue-and-be-sued clause. See 12 U. S. C. § 1819(a) Fourth (1988 ed., Supp. IV) (FDIC "shall have power . . . [t]o sue and be sued, and complain and defend, in any court of law or equity, State or Federal").

§ 1346(b).[4] In order to "place torts of 'suable' agencies . . . upon precisely the same footing as torts of 'nonsuable' agencies," *Loeffler, supra,* at 562 (internal quotation marks omitted), Congress, through the FTCA, limited the scope of sue-and-be-sued waivers such as that contained in FSLIC's organic statute. The FTCA limitation provides:

> "The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive." 28 U. S. C. § 2679(a).

Thus, if a suit is "cognizable" under § 1346(b) of the FTCA, the FTCA remedy is "exclusive" and the federal agency cannot be sued "in its own name," despite the existence of a sue-and-be-sued clause.

The first question, then, is whether Meyer's claim is "cognizable" under § 1346(b). The term "cognizable" is not defined in the Act. In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning. *Smith* v. *United States,* 508 U. S. 223, 228 (1993). Cognizable ordinarily means "[c]apable of being tried or examined before a designated tribunal; within [the] jurisdiction of [a] court or power given to [a] court to adjudicate [a] controversy." Black's Law Dictionary 259 (6th ed. 1990). Under this definition, the inquiry focuses on the jurisdictional grant provided by § 1346(b).

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[4] Section 1346(b) provides:

"[T]he district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

Section 1346(b) grants the federal district courts jurisdiction over a certain category of claims for which the United States has waived its sovereign immunity and "render[ed]" itself liable. *Richards* v. *United States,* 369 U. S. 1, 6 (1962). This category includes claims that are:

> "[1] against the United States, [2] for money damages, . . . [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346(b).

A claim comes within this jurisdictional grant—and thus is "cognizable" under § 1346(b)—if it is actionable under § 1346(b). And a claim is actionable under § 1346(b) if it alleges the six elements outlined above. See *Loeffler, supra,* at 562 (§ 2679(a) limits the scope of sue-and-be-sued waivers "in the context of suits for which [Congress] *provided a cause of action* under the FTCA" (emphasis added)).[5]

Applying these principles to this case, we conclude that Meyer's constitutional tort claim is not "cognizable" under § 1346(b) because it is not actionable under § 1346(b)—that is, § 1346(b) does not provide a cause of action for such a claim. As noted above, to be actionable under § 1346(b), a claim must allege, *inter alia,* that the United States "would be liable to the claimant" as "a private person" "in accordance with the law of the place where the act or omission occurred." A constitutional tort claim such as Meyer's could not contain such an allegation. Indeed, we have consistently held that § 1346(b)'s reference to the "law of the place" means law of the State—the source of substantive liability under the FTCA. See, *e. g., Miree* v. *DeKalb County,* 433 U. S. 25, 29, n. 4 (1977); *United States* v. *Muniz,* 374 U. S. 150, 153 (1963); *Richards, supra,* at 6–7, 11; *Rayonier Inc.* v. *United States,* 352 U. S. 315, 318 (1957). By definition, federal law, not state law, provides the source of liability for a claim alleging the deprivation of a federal constitutional right. To use the terminology of *Richards,* the United States simply has not rendered itself liable under § 1346(b) for constitutional tort claims. Thus, because Meyer's constitutional tort claim is not cognizable under § 1346(b), the FTCA does not constitute his "exclusive" remedy. His claim was therefore properly brought against FSLIC "in its own name." 28 U. S. C. § 2679(a).

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[5] Because we were not asked to define "cognizability" in *Loeffler,* our language was a bit imprecise. The question is not whether a claim is cognizable *under the FTCA* generally, as *Loeffler* suggests, but rather whether it is "cognizable *under section 1346(b).*" 28 U. S. C. § 2679(a) (emphasis added).

FDIC argues that by exposing a sue-and-be-sued agency to constitutional tort claims, our interpretation of "cognizability" runs afoul of Congress' understanding that § 2679(a) would place the torts of "suable" and "nonsuable" agencies on the same footing. See *Loeffler,* 486 U. S., at 562. FDIC would deem all claims "sounding in tort"—including constitutional torts—"cognizable" under § 1346(b). Under FDIC's reading of the statute, only the portion of § 1346(b) that describes a "tort"—*i. e.,* "claims against the United States, for money damages, . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government"—would govern cognizability. The remaining portion of § 1346(b) would simply describe a "limitation" on the waiver of sovereign immunity.[6]

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[6] FDIC relies upon *United States* v. *Smith,* 499 U. S. 160 (1991), for its interpretation of the term "cognizable." In *Smith,* the "foreign country" exception, 28 U. S. C. § 2680(k), barred plaintiffs' recovery against the Federal Government for injuries allegedly caused by the negligence of a Government employee working abroad. 499 U. S., at 165. We held that the

We reject this reading of the statute. As we have already noted, § 1346(b) describes the scope of jurisdiction by reference to claims for which the United States has waived its immunity and rendered itself liable. FDIC seeks to uncouple the scope of jurisdiction under § 1346(b) from the scope of the waiver of sovereign immunity under § 1346(b). Under its interpretation, the jurisdictional grant would be broad (covering all claims sounding in tort), but the waiver of sovereign immunity would be narrow (covering only those claims for which a private person would be held liable under state law). There simply is no basis in the statutory language for the parsing FDIC suggests. Section 2679(a)'s reference to claims "cognizable" under § 1346(b) means cognizable under the whole of § 1346(b), not simply a portion of it.[7]

FTCA provided plaintiffs' "exclusive remedy," even though the FTCA itself did not provide a means of recovery. *Id.*, at 166. *Smith* did not involve § 2679(a), the provision at issue in this case, but rather § 2679(b)(1), which provides that the FTCA remedy is "exclusive of any other civil action or proceeding for money damages . . . against the employee whose act or omission gave rise to the claim." The Court had no occasion in *Smith* to address the meaning of the term "cognizable" because § 2679(b)(1) does not contain the term. We therefore find *Smith* unhelpful in this regard.

[7] Nothing in our decision in *Hubsch* v. *United States*, 338 U. S. 440 (1949) *(per curiam)*, is to the contrary. In *Hubsch*, the parties submitted to this Court for approval a settlement agreement under 28 U. S. C. § 2677 (1946 ed., Supp. IV), which at the time provided that the Attorney General, "with the approval of the court," could "settle any claim *cognizable under section 1346(b)*." 338 U. S., at 440 (emphasis added). We construed § 2677 "as imposing on the District Court the authority and responsibility for passing on proposed compromises," notwithstanding the fact that it had found that the claimant failed to prove the Government employee acted within the scope of his authority (the fifth element of § 1346(b) mentioned above). *Id.*, at 441. See also *Hubsch* v. *United States*, 174 F. 2d 7 (CA5 1949). Our holding in the case recognized that a claim does not lose its cognizability simply because there has been a failure of proof on an element of the claim. In this case there has been no failure of proof; rather, Meyer's claim does not fall within the terms of § 1346(b) in the first instance.

B

Because Meyer's claim is not cognizable under § 1346(b), we must determine whether FSLIC's sue-and-be-sued clause waives sovereign immunity for the claim. FDIC argues that the scope of the sue-and-be-sued waiver should be limited to cases in which FSLIC would be subjected to liability as a private entity. A constitutional tort claim such as Meyer's, FDIC argues, would fall outside the sue-and-be-sued waiver because the Constitution generally does not restrict the conduct of private entities. In essence, FDIC asks us to engraft a portion of the sixth element of § 1346(b)—liability "under circumstances where the United States, if a private person, would be liable to the claimant"—onto the sue-and-be-sued clause.

On its face, the sue-and-be-sued clause contains no such limitation. To the contrary, its terms are simple and broad: FSLIC "shall have power . . . [t]o sue and be sued, complain and defend, in any court of competent jurisdiction in the United States." 12 U. S. C. § 1725(c)(4) (repealed 1989). In the past, we have recognized that such sue-and-be-sued waivers are to be "liberally construed," *Federal Housing Administration* v. *Burr*, 309 U. S., at 245, notwithstanding the general rule that waivers of sovereign immunity are to be read narrowly in favor of the sovereign. See *United States* v. *Nordic Village, Inc.*, 503 U. S., at 34. *Burr* makes it clear that sue-and-be-sued clauses cannot be limited by implication unless there has been a

> "clea[r] show[ing] that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the 'sue and be sued' clause in a narrow sense." 309 U. S., at 245 (footnote omitted).

See also *Loeffler*, 486 U. S., at 561; *Franchise Tax Bd. of Cal.* v. *Postal Service*, 467 U. S. 512, 517–518 (1984). Absent such a showing, agencies "authorized to 'sue and be sued' are presumed to have fully waived immunity." *International Primate Protection League* v. *Administrators of Tulane Ed. Fund*, 500 U. S. 72, 86, n. 8 (1991) (describing the holding in *Burr*).

FDIC does not attempt to make the "clear" showing of congressional purpose necessary to overcome the presumption that immunity has been waived.[8] Instead, it bases its argument solely on language in our cases suggesting that federal agencies should bear the burdens of suit borne by private entities. Typical of these cases is *Burr*, which stated that "when Congress launche[s] a governmental agency into the commercial world and endow[s] it with authority to 'sue or be sued,' *that agency is not less amenable to judicial process than a private enterprise* under like circumstances would be." 309 U. S., at 245 (emphasis added). See also *Franchise Tax Bd., supra*, at 520 ("[U]nder *Burr* not only must we liberally construe the sue-and-be-sued clause, but also we must presume that the [Postal] Service's liability *is the same as that of any other business*") (emphasis added); *Loeffler, supra*, at 557 (through a sue-and-be-sued clause, "Congress waived [the Postal Service's] immunity from interest awards, authorizing recovery of interest from the Postal Service *to the extent that interest is recoverable against a private party* as a normal incident of suit" (emphasis added)).

When read in context, however, it is clear that *Burr*, *Franchise Tax Board*, and *Loeffler* do not support the limitation FDIC proposes. In these cases, the claimants sought to subject the agencies to a particular suit or incident of suit to which private businesses are amenable as a matter of course.

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[8] In its brief discussion of the sue-and-be-sued clause, FDIC does not mention—let alone attempt to overcome—the presumption of waiver. See Brief for Petitioner 12–13.

In *Burr,* for example, the claimant, who had obtained a judgment against an employee of the Federal Housing Administration (FHA), served the FHA with a writ to garnish the employee's wages. 309 U. S., at 243, 248, n. 11. Similarly, in *Franchise Tax Board,* the claimant directed the United States Postal Service to withhold amounts of delinquent state income taxes from the wages of four Postal Service employees. 467 U. S., at 513. And in *Loeffler,* the claimant, who was discharged from his employment as a rural letter carrier, sought prejudgment interest as an incident of his successful suit against the Postal Service under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* 486 U. S., at 551–552.

Because the claimant in each of these cases was seeking to hold the agency liable just like "any other business," *Franchise Tax Board, supra,* at 520, it was only natural for the Court to look to the liability of private businesses for guidance. It stood to reason that the agency could not escape the liability a private enterprise would face in similar circumstances. Here, by contrast, Meyer does not seek to hold FSLIC liable just like any other business. Indeed, he seeks to impose on FSLIC a form of tort liability—tort liability arising under the Constitution—that generally does not apply to private entities. *Burr, Franchise Tax Board,* and *Loeffler* simply do not speak to the issue of sovereign immunity in the context of such a constitutional tort claim.

Moreover, nothing in these decisions suggests that the liability of a private enterprise should serve as the *outer boundary* of the sue-and-be-sued waiver. Rather, those cases "merely involve[d] a determination of whether or not [the particular suit or incident of suit] [came] within the scope of" the sue-and-be-sued waiver. *Burr, supra,* at 244. When we determined that the particular suit or incident of suit fell within the sue-and-be-sued waiver, we looked to the liability of a private enterprise as a *floor* below which the agency's liability could not fall. In the present case, by contrast, FDIC argues that a sue-and-be-sued agency's liability should never be *greater* than that of a private entity; that is, it attempts to use the liability of a private entity as a *ceiling.* Again, nothing in *Burr, Franchise Tax Board,* or *Loeffler* supports such a result.

Finally, we hesitate to engraft language from § 1346(b) onto the sue-and-be-sued clause when Congress, in § 2679(a), expressly set out how the former provision would limit the latter. As provided in § 2679(a), § 1346(b) limits sue-and-be-sued waivers for claims that are "cognizable" under § 1346(b). Thus, § 2679(a) contemplates that a sue-and-be-sued waiver could encompass claims not cognizable under § 1346(b) and render an agency subject to suit unconstrained by the express limitations of the FTCA. FDIC's construction—taken to its logical conclusion—would not permit this result because it would render coextensive the scope of the waivers contained in § 1346(b) and sue-and-be-sued clauses generally. Had Congress wished to achieve that outcome, it surely would not have employed the language it did in § 2679(a). See *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253–254 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there"). Because "[n]o showing has been made to overcome [the] presumption" that the sue-and-be-sued clause "fully waived" FSLIC's immunity in this instance, *Franchise Tax Board, supra,* at 520; *International Primate Protection League,* 500 U. S., at 86, n. 8, we hold that FSLIC's sue-and-be-sued clause waives the agency's sovereign immunity for Meyer's constitutional tort claim.

III

Although we have determined that Meyer's claim falls within the sue-and-be-sued waiver, our inquiry does not end at this point. Here we part ways with the Ninth Circuit, which determined that Meyer had a cause of action for damages against FSLIC *because* there had been a waiver of sovereign immunity. 944 F. 2d, at 572. The Ninth Circuit's reasoning conflates two "analytically distinct" inquiries. *United States* v. *Mitchell,* 463 U. S., at 218. The first inquiry is whether there has been a waiver of sovereign immunity. If there has been such a waiver, as in this case, the second inquiry comes into play—that is, whether the source of substantive law upon which the claimant relies provides an avenue for relief. *Id.,* at 216–217. It is to this second inquiry that we now turn.

Meyer bases his due process claim on our decision in *Bivens,* which held that an individual injured by a federal agent's alleged violation of the Fourth Amendment may bring an action for damages against the agent. 403 U. S., at 397. In our most recent decisions, we have "responded cautiously to suggestions that *Bivens* remedies be extended into new contexts." *Schweiker* v. *Chilicky,* 487 U. S. 412, 421 (1988).[9] In this case, Meyer seeks a significant extension of *Bivens:* He asks us to expand the category of defendants against whom *Bivens*-type actions may be brought to include not only federal *agents,* but federal *agencies* as well.

We know of no Court of Appeals decision, other than the Ninth Circuit's below, that has implied a *Bivens*-type cause of action directly against a federal agency. Meyer recognizes the absence of authority supporting his position, but argues that the "logic" of *Bivens* would support such a remedy. We disagree. In *Bivens,* the petitioner sued the agents of the Federal Bureau of Narcotics who allegedly violated his rights, not the Bureau itself. 403 U. S., at 389–390.

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[9] For example, a *Bivens* action alleging a violation of the Due Process Clause of the Fifth Amendment may be appropriate in some contexts, but not in others. Compare *Davis* v. *Passman,* 442 U. S. 228, 248–249 (1979) (implying *Bivens* action under the equal protection component of the Due Process Clause in the context of alleged gender discrimination in employment), with *Schweiker* v. *Chilicky,* 487 U. S., at 429 (refusing to imply *Bivens* action for alleged due process violations in the denial of Social Security disability benefits on the ground that a damages remedy was not included in the elaborate remedial scheme devised by Congress).

Here, Meyer brought precisely the claim that the logic of *Bivens* supports—a *Bivens* claim for damages against Pattullo, the FSLIC employee who terminated him.[10]

An additional problem with Meyer's "logic" argument is the fact that we implied a cause of action against federal officials in *Bivens* in part *because* a direct action against the Government was not available. *Id.*, at 410 (Harlan, J., concurring in judgment). In essence, Meyer asks us to imply a damages action based on a decision that presumed the *absence* of that very action.

Meyer's real complaint is that Pattullo, like many *Bivens* defendants, invoked the protection of qualified immunity. But *Bivens* clearly contemplated that official immunity would be raised. *Id.*, at 397 (noting that "the District Court [had] ruled that . . . respondents were immune from liability by virtue of their official position"). More importantly, Meyer's proposed "solution"—essentially the circumvention of qualified immunity—would mean the evisceration of the *Bivens* remedy, rather than its extension. It must be remembered that the purpose of *Bivens* is to deter *the officer.* See *Carlson* v. *Green,* 446 U. S. 14, 21 (1980) ("Because the *Bivens* remedy is recoverable against individuals, it is a more effective deterrent than the FTCA remedy against the United States"). If we were to imply a damages action directly against federal agencies, thereby permitting claimants to bypass qualified immunity, there would be no reason for aggrieved parties to bring damages actions against individual officers. Under Meyer's regime, the deterrent effects of the *Bivens* remedy would be lost.

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[10] Although not critical to our analysis, we note that in addition to the *Bivens* claim against Pattullo, Meyer initially brought a contractual claim against FSLIC, which he later dropped. Meyer also could have filed a claim with FSLIC as receiver for the value of any contractual rights he believed were violated. See 12 U. S. C. § 1729(d) (repealed 1989); 12 CFR §§ 569a.6, 569a.7 (1982); *Coit Independence Joint Venture* v. *FSLIC,* 489 U. S. 561, 580–581 (1989).

Finally, a damages remedy against federal agencies would be inappropriate even if such a remedy were consistent with *Bivens.* Here, unlike in *Bivens,* there are "special factors counselling hesitation" in the creation of a damages remedy. *Bivens,* 403 U. S., at 396. If we were to recognize a direct action for damages against federal agencies, we would be creating a potentially enormous financial burden for the Federal Government. Meyer disputes this reasoning and argues that the Federal Government already expends significant resources indemnifying its employees who are sued under *Bivens.* Meyer's argument implicitly suggests that the funds used for indemnification could be shifted to cover the direct liability of federal agencies. That may or may not be true, but decisions involving "'federal fiscal policy'" are not ours to make. *Ibid.* (quoting *United States* v. *Standard Oil Co. of Cal.,* 332 U. S. 301, 311 (1947)). We leave it to Congress to weigh the implications of such a significant expansion of Government liability.[11]

IV

An extension of *Bivens* to agencies of the Federal Government is not supported by the logic of *Bivens* itself. We therefore hold that Meyer had no *Bivens* cause of action for damages against FSLIC. Accordingly, the judgment below is reversed.[12]

So ordered.

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[11] In this regard, we note that Congress has considered several proposals that would have created a *Bivens*-type remedy directly against the Federal Government. See, *e. g.,* H. R. 440, 99th Cong., 1st Sess. (1985); H. R. 595, 98th Cong., 1st Sess. (1983); S. 1775, 97th Cong., 1st Sess. (1981); H. R. 2659, 96th Cong., 1st Sess. (1979).

[12] Because we find that Meyer had no *Bivens* action against FSLIC, we do not reach the merits of his due process claim.

UNITED STATES DEPARTMENT OF DEFENSE ET AL. *v.* FEDERAL LABOR RELATIONS AUTHORITY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 92–1223. Argued November 8, 1993—Decided February 23, 1994

Two local unions filed unfair labor practice charges with respondent Federal Labor Relations Authority after petitioner federal agencies refused to provide them with the home addresses of agency employees in the bargaining units represented by the unions. The Authority concluded that the Federal Service Labor-Management Relations Statute (Labor Statute) required the agencies to divulge the addresses and rejected petitioners' argument that such disclosure was prohibited by the Privacy Act of 1974. The Court of Appeals granted enforcement of the Authority's disclosure orders. It agreed that the Privacy Act did not bar disclosure because disclosure would be required under the Freedom of Information Act (FOIA). In determining that FOIA Exemption 6—which exempts from disclosure personnel files "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"—did not apply, the court balanced the public interest in effective collective bargaining embodied in the Labor Statute against the employees' interest in keeping their home addresses private. It thereby rejected the view that, under *Department of Justice* v. *Reporters Comm. for Freedom of Press,* 489 U. S. 749, the only public interest to be weighed in the analysis is the extent to which FOIA's central purpose of opening agency action to public scrutiny would be served by disclosure.

Held: The Privacy Act forbids the disclosure of employee addresses to collective-bargaining representatives pursuant to requests made under the Labor Statute. Pp. 492–504.

(a) *Department of Justice* v. *Reporters Comm. for Freedom of Press, supra,* reaffirms several basic principles that have informed the Court's interpretation of FOIA: (1) in evaluating whether a request for information lies within the scope of an exemption that bars disclosure when it would amount to an unwarranted invasion of privacy, a court must balance the public interest in disclosure against the interest Congress intended the exemption to protect; (2) the only relevant public interest to be weighed in this balance is the extent to which disclosure would serve FOIA's core purpose of contributing significantly to public understanding of the Government's operations or activities; and (3) whether an invasion of privacy is warranted cannot turn on the purposes for which the information request is made. Pp. 492–496.

(b) These principles are easily applied to this case. The relevant public interest supporting disclosure is negligible, at best. Disclosure of the addresses would not appreciably further the citizens' right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities. Respondents' argument that, because the unions' requests were made under the Labor Statute rather than directly under FOIA, the Labor Statute's explicit policy considerations should be imported into the FOIA balancing analysis, is rejected. In this case, the Privacy Act bars disclosure unless it would be required under FOIA. The Labor Statute's terms do not amend FOIA's disclosure requirements or grant information requesters under the Labor Statute special status for purposes of FOIA. Therefore, because all FOIA requesters have an equal and equally qualified right to information, the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis. The negligible FOIA-related public interest in disclosure is substantially outweighed by the employees' privacy interest in nondisclosure. For the most part, the unions seek to obtain nonunion employees' addresses. Whatever the reason that these employees have chosen not to become union members or to provide the unions with their addresses, it is clear that they have *some* nontrivial privacy interest in nondisclosure, and in avoiding the influx of union-related mail, and, perhaps, union-related telephone calls or visits, that would follow disclosure. Because the privacy interest outweighs the relevant public interest, FOIA Exemption 6 applies. FOIA thus does not require petitioners to disclose the addresses, and the Privacy Act prohibits their release. Pp. 497–502.

(c) Rather than thwart the collective-bargaining policies embodied in the Labor Statute, the Court does no more than give effect to the clear words of the provisions construed, including the Labor Statute. Not presented, and therefore not addressed, is respondents' concern that this ruling will allow agencies to refuse to provide unions with other employee records that they need in order to perform their duties as exclusive bargaining representatives. Finally, to the extent that the terms of the Privacy Act leave public sector unions in a position different from that of their private sector counterparts, which assertedly are entitled to receive employee home addresses under the National Labor Relations Act, Congress may correct the disparity. Pp. 502–504.

975 F. 2d 1105, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, STEVENS, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. SOUTER, J., filed a concurring opinion, *post*, p. 504. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 504.

Christopher J. Wright argued the cause for petitioners. With him on the briefs were *Solicitor General Days, Acting Solicitor General Bryson, Acting Assistant Attorney General Schiffer, Deputy Solicitor General Wallace, Leonard Schaitman,* and *Sandra Wien Simon.*

David M. Smith argued the cause for respondents. With him on the brief for respondent Federal Labor Relations Authority were *William R. Tobey, William E. Persina,* and *Pamela P. Johnson. Mark D. Roth, Charles A. Hobbie, Stuart A. Kirsch, Walter Kamiat,* and *Laurence Gold* filed a brief for respondent American Federation of Government Employees, AFL–CIO.*

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to consider whether disclosure of the home addresses of federal civil service employees by their employing agency pursuant to a request made by the employees' collective-bargaining representative under the Federal Service Labor-Management Relations Statute, 5 U. S. C. §§7101–7135 (1988 ed. and Supp. IV), would constitute a "clearly unwarranted invasion" of the employees' personal privacy within the meaning of the Freedom of Information Act, 5 U. S. C. §552. Concluding that it would, we reverse the judgment of the Court of Appeals.

**Rossie D. Alston, Jr.*, filed a brief for the National Right to Work Legal Defense Foundation, Inc., as *amicus curiae* urging reversal.

Gregory O'Duden and *Elaine Kaplan* filed a brief for the National Treasury Employees Union as *amicus curiae* urging affirmance.

I

The controversy underlying this case arose when two local unions[1] requested the petitioner federal agencies[2] to provide them with the names and home addresses of the agency employees in the bargaining units represented by the unions. The agencies supplied the unions with the employees' names and work stations, but refused to release home addresses.

In response, the unions filed unfair labor practice charges with respondent Federal Labor Relations Authority (Authority), in which they contended that the Federal Service Labor-Management Relations Statute (Labor Statute), 5 U. S. C. §§7101–7135 (1988 ed. and Supp. IV), required the agencies to divulge the addresses. The Labor Statute generally provides that agencies must, "to the extent not prohibited by law," furnish unions with data that are necessary for collective-bargaining purposes. §7114(b)(4). The agencies argued that disclosure of the home addresses was prohibited by the Privacy Act of 1974 (Privacy Act), 5 U. S. C. §552a (1988 ed. and Supp. IV). Relying on its earlier decision in *Department of Navy, Portsmouth Naval Shipyard, Portsmouth, N. H.,* 37 F. L. R. A. 515 (1990) *(Portsmouth),* application for enforcement denied and cross-petition for review granted *sub nom. FLRA* v. *Department of Navy, Naval Communications Unit Cutler,* 941 F. 2d 49 (CA1 1991), the Authority rejected that argument and ordered the agencies to divulge the addresses. *Department of Defense, Army*

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[1] Local 1657 of the United Food and Commercial Workers Union represents a bargaining unit composed of employees of the Navy CBC Exchange in Gulfport, Mississippi. Local 1345 of respondent American Federation of Government Employees, AFL–CIO, represents a worldwide bargaining unit composed of employees of the Army and Air Force Exchange, which is headquartered in Dallas, Texas.

[2] Petitioners are the U. S. Department of Defense, U. S. Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, and the U. S. Department of Defense, Army and Air Force Exchange, Dallas, Texas.

and Air Force Exchange Serv., Dallas, Tex., 37 F. L. R. A. 930 (1990); *Department of Navy,* 37 F. L. R. A. 652 (1990).

A divided panel of the United States Court of Appeals for the Fifth Circuit granted enforcement of the Authority's orders. 975 F. 2d 1105 (1992). The panel majority agreed with the Authority that the unions' requests for home addresses fell within a statutory exception to the Privacy Act. That Act does not bar disclosure of personal information if disclosure would be "required under section 552 of this title [the Freedom of Information Act (FOIA)]." 5 U. S. C. § 552a(b)(2). The court below observed that FOIA, with certain enumerated exceptions, generally mandates full disclosure of information held by agencies. In the view of the Court of Appeals, only one of the enumerated exceptions—the provision exempting from FOIA's coverage personnel files "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," 5 U. S. C. § 552(b)(6) (Exemption 6)—potentially applied to this case. 975 F. 2d, at 1109.

In determining whether Exemption 6 applied, the Fifth Circuit balanced the public interest in effective collective bargaining embodied in the Labor Statute against the interest of employees in keeping their home addresses private. The court recognized that, in light of our decision in *Department of Justice* v. *Reporters Comm. for Freedom of Press,* 489 U. S. 749 (1989), other Courts of Appeals had concluded that the only public interest to be weighed in the Exemption 6 balancing analysis is the extent to which FOIA's central purpose of opening agency action to public scrutiny would be served by disclosure.[3] Rejecting that view, however, the panel majority reasoned that *Reporters Committee* "has absolutely nothing to say about . . . the situation that arises when disclosure is initially required by some statute other than the FOIA, and the FOIA is employed only secondarily." 975 F. 2d, at 1113. In such cases, the court ruled that "it is proper for the federal court to consider the public interests embodied in the statute which generates the disclosure request." *Id.*, at 1115.

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[3] See, *e. g., Department of Navy, Navy Exchange* v. *FLRA,* 975 F. 2d 348 (CA7 1992); *FLRA* v. *Department of Veterans Affairs,* 958 F. 2d 503 (CA2 1992); *FLRA* v. *Department of Navy, Naval Communications Unit Cutler,* 941 F. 2d 49 (CA1 1991); *FLRA* v. *Department of Treasury, Financial Management Serv.,* 884 F. 2d 1446 (CADC 1989), cert. denied, 493 U. S. 1055 (1990).

Applying this approach, the court concluded that, because the weighty interest in public sector collective bargaining identified by Congress in the Labor Statute would be advanced by the release of the home addresses, disclosure "would not constitute a clearly unwarranted invasion of privacy." *Id.*, at 1116. In the panel majority's view, because Exemption 6 would not apply, FOIA would require disclosure of the addresses; in turn, therefore, the Privacy Act did not forbid the agencies to divulge the addresses, and the Authority's orders were binding. *Ibid.* The dissenting judge argued that *Reporters Committee* controlled the case and barred the agencies from disclosing their employees' addresses to the unions. *Id.*, at 1116–1119 (Garza, J., dissenting).

We granted certiorari, 507 U. S. 1003 (1993), to resolve a conflict among the Courts of Appeals concerning whether the Privacy Act forbids the disclosure of employee addresses to collective-bargaining representatives pursuant to information requests made under the Labor Statute.

II

Like the Court of Appeals, we begin our analysis with the terms of the Labor Statute, which governs labor-management relations in the federal civil service. Consistent with the congressional finding that "labor organizations and collective bargaining in the civil service are in the public interest," 5 U. S. C. § 7101(a), the Labor Statute requires an agency to accord exclusive recognition to a labor union that is elected by employees to serve as the representative of a bargaining unit. § 7111(a). An exclusive representative must represent fairly all employees in the unit, regardless of whether they choose to become union members. § 7114(a)(1). The Labor Statute also imposes a duty on the agency and the exclusive representative to negotiate in good faith for the purpose of arriving at a collective-bargaining agreement. § 7114(a)(4).

To fulfill its good-faith bargaining obligation, an agency must, *inter alia,* "furnish to the exclusive representative involved, or its authorized representative, upon request and, *to the extent not prohibited by law,* data . . . (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining." § 7114(b)(4)(B) (emphasis added). The Authority has determined that the home addresses of bargaining unit employees constitute information that is "necessary" to the collective-bargaining process because through them, unions may communicate with employees more effectively than would otherwise be possible. See *Portsmouth,* 37 F. L. R. A., at 532 ("In the home environment, the employee has the leisure and the privacy to give the full and thoughtful attention to the union's message that the workplace generally does not permit"); *Farmers Home Admin. Finance Office,* 23 F. L. R. A. 788, 796–797 (1986). This determination, which has been upheld by several Courts of Appeals,[4] is not before us. Nor is there any dispute that the addresses are "reasonably available." Therefore, unless disclosure is "prohibited by law," agencies such as petitioners must release home addresses to exclusive representatives upon request.

Petitioners contend that the Privacy Act prohibits disclosure. This statute provides in part:

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[4] See, *e. g., FLRA* v. *Department of Defense, Army and Air Force Exchange Serv.,* 984 F. 2d 370, 373 (CA10 1993); *Department of Veterans Affairs, supra,* at 507–508.

> "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be . . . (2) required under section 552 of this title [FOIA]." 5 U. S. C. § 552a(b)(2) (1988 ed. and Supp. IV).

The employee addresses sought by the unions are "records" covered by the broad terms of the Privacy Act. Therefore, unless FOIA would require release of the addresses, their disclosure is "prohibited by law," and the agencies may not reveal them to the unions.[5]

We turn, then, to FOIA. As we have recognized previously, FOIA reflects "a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." *Department of Air Force* v. *Rose,* 425 U. S. 352, 360–361 (1976) (internal quotation marks omitted). See also *EPA* v. *Mink,* 410 U. S. 73, 79–80 (1973). Thus, while "disclosure, not secrecy, is the dominant objective of [FOIA]," there are a number of exemptions from the statute's broad reach. *Rose, supra,* at 361. The exemption potentially applicable to employee addresses is Exemption 6, which provides that FOIA's disclosure requirements do not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(6).

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[5] The written-consent provision of the Privacy Act is not implicated in this case. The unions already have access to the addresses of their members and to those of nonmembers who have divulged this information to them. It is not disputed that the unions are able to contact bargaining unit employees at work and ask them for their home addresses. In practical effect, the unions seek only those addresses that they do not currently possess: the addresses of nonunion employees who have not revealed this information to their exclusive representative.

We also note that we are not asked in this case to consider the potential applicability of any other Privacy Act exceptions, such as the "routine use" exception. See 5 U. S. C. § 552a(b)(3). Respondents rely solely on the argument that the unions' requests for home addresses fall within the Privacy Act's FOIA exception.

Thus, although this case requires us to follow a somewhat convoluted path of statutory cross-references, its proper resolution depends upon a discrete inquiry: whether disclosure of the home addresses "would constitute a clearly unwarranted invasion of [the] personal privacy" of bargaining unit employees within the meaning of FOIA. For guidance in answering this question, we need look no further than to our decision in *Department of Justice* v. *Reporters Comm. for Freedom of Press,* 489 U. S. 749 (1989).

Reporters Committee involved FOIA requests addressed to the Federal Bureau of Investigation that sought the "rap sheets" of several individuals. In the process of deciding that the FBI was prohibited from disclosing the contents of the rap sheets, we reaffirmed several basic principles that have informed our interpretation of FOIA. First, in evaluating whether a request for information lies within the scope of a FOIA exemption, such as Exemption 6, that bars disclosure when it would amount to an invasion of privacy that is to some degree "unwarranted," "a court must balance the public interest in disclosure against the interest Congress intended the [e]xemption to protect." *Id.*, at 776. See also *Rose, supra,* at 372.

Second, the only relevant "public interest in disclosure" to be weighed in this balance is the extent to which disclosure would serve the "core purpose of the FOIA," which is "contribut[ing] significantly to public understanding *of the operations or activities of the government.*" *Reporters Comm., supra,* at 775 (internal quotation marks omitted). We elaborated on this point at some length:

> "[FOIA's] basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language' indeed focuses on the citizens' right to be informed about what their government is up to. Official

> information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct." 489 U. S., at 773 (quoting *Rose, supra,* at 360–361) (other internal quotation marks and citations omitted).

See also *Rose, supra,* at 372 (Exemption 6 cases "require a balancing of the individual's right of privacy against the preservation of the basic purpose of [FOIA] to open agency action to the light of public scrutiny") (internal quotation marks omitted).

Third, "whether an invasion of privacy is *warranted* cannot turn on the purposes for which the request for information is made." *Reporters Comm.,* 489 U. S., at 771. Because "Congress 'clearly intended' the FOIA 'to give any member of the public as much right to disclosure as one with a special interest [in a particular document],'" *ibid.* (quoting *NLRB* v. *Sears, Roebuck & Co.,* 421 U. S. 132, 149 (1975)), except in certain cases involving claims of privilege, "the identity of the requesting party has no bearing on the merits of his or her FOIA request," 489 U. S., at 771.[6]

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[6] Our decision in *Reporters Committee* turned on the applicability of FOIA Exemption 7(C) to the requests for "rap sheets." In pertinent part, Exemption 7(C) provides that "[FOIA] does not apply to matters that are . . . (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(7)(C). When we applied the FOIA principles discussed in the text, we concluded that "[t]he privacy interest in maintaining the practical obscurity of rap-sheet information will always be high," and that "the FOIA-based public interest in disclosure is at its nadir" when third parties seek law enforcement records concerning private citizens, given that those records would shed no light on the activities of government agencies or officials. *Reporters Comm.,* 489 U. S., at 780. Because the privacy interest outweighed the relevant

III

The principles that we followed in *Reporters Committee* can be applied easily to this case. We must weigh the privacy interest of bargaining unit employees in nondisclosure of their addresses against the only relevant public interest in the FOIA balancing analysis—the extent to which disclosure of the information sought would "she[d] light on an agency's performance of its statutory duties" or otherwise let citizens know "what their government is up to." *Reporters Comm., supra,* at 773 (internal quotation marks omitted; emphasis deleted).

The relevant public interest supporting disclosure in this case is negligible, at best. Disclosure of the addresses might allow the unions to communicate more effectively with employees, but it would not appreciably further "the citizens' right to be informed about what their government is up to." 489 U. S., at 773 (internal quotation marks omitted). Indeed, such disclosure would reveal little or nothing about the employing agencies or their activities. Even the Fifth

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public interest, we held as a categorical matter that such records are excepted from FOIA's broad disclosure requirements by Exemption 7(C). *Ibid.*

Exemption 7(C) is more protective of privacy than Exemption 6: The former provision applies to any disclosure that "could reasonably be expected to constitute" an invasion of privacy that is "unwarranted," while the latter bars any disclosure that "would constitute" an invasion of privacy that is "clearly unwarranted." Contrary to the view of the court below, see 975 F. 2d, at 1113, however, the fact that *Reporters Committee* dealt with a different FOIA exemption than the one we focus on today is of little import. Exemptions 7(C) and 6 differ in the magnitude of the public interest that is required to override the respective privacy interests protected by the exemptions. As we shall see in Part III, *infra,* however, the dispositive issue here is the *identification* of the relevant public interest to be weighed in the balance, not the *magnitude* of that interest. *Reporters Committee* provides the same guidance in making this identification in Exemption 7(C) and Exemption 6 cases. See, *e. g., Department of State* v. *Ray,* 502 U. S. 164 (1991) (Exemption 6 case applying *Reporters Committee*).

Circuit recognized that "[r]elease of the employees' . . . addresses would not in any meaningful way open agency action to the light of public scrutiny." 975 F. 2d, at 1113.

Apparently realizing that this conclusion follows ineluctably from an application of the FOIA tenets we embraced in *Reporters Committee*, respondents argue that *Reporters Committee* is largely inapposite here because it dealt with an information request made directly under FOIA, whereas the unions' requests for home addresses initially were made under the Labor Statute, and implicated FOIA only incidentally through a chain of statutory cross-references. In such a circumstance, contend respondents, to give full effect to the three statutes involved and to allow unions to perform their statutory representational duties, we should import the policy considerations that are made explicit in the Labor Statute into the FOIA Exemption 6 balancing analysis. If we were to do so, respondents are confident we would conclude that the Labor Statute's policy favoring collective bargaining easily outweighs any privacy interest that employees might have in nondisclosure.

We decline to accept respondents' ambitious invitation to rewrite the statutes before us and to disregard the FOIA principles reaffirmed in *Reporters Committee.* The Labor Statute does not, as the Fifth Circuit suggested, merely "borro[w] the FOIA's disclosure calculus for another purpose." 975 F. 2d, at 1115. Rather, it allows the disclosure of information necessary for effective collective bargaining only "to the extent not prohibited by law." 5 U. S. C. § 7114(b)(4). Disclosure of the home addresses is prohibited by the Privacy Act unless an exception to that Act applies. The terms of the Labor Statute in no way suggest that the Privacy Act should be read in light of the purposes of the Labor Statute. If there is an exception, therefore, it must be found within the Privacy Act itself. Congress could have enacted an exception to the Privacy Act's coverage for information "necessary" for collective-bargaining purposes, but it did not do so. In the absence of such a provision, respondents rely on the exception for information the disclosure of which would be "required under [FOIA]." § 552a(b)(2). Nowhere, however, does the Labor Statute amend FOIA's disclosure requirements or grant information requesters under the Labor Statute special status under FOIA.[7] Therefore, because all FOIA requesters have an equal, and equally qualified, right to information, the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis. Cf. *Reporters Comm.*, 489 U. S., at 771–772.

In her concurring opinion in *FLRA* v. *Department of Treasury, Financial Management Serv.*, 884 F. 2d 1446 (CADC 1989), cert. denied, 493 U. S. 1055 (1990), then-Judge Ginsburg cogently explained why we must reject respondents' central argument:

> "The broad cross-reference in 5 U. S. C. § 7114(b)(4)—'to the extent not prohibited by law'—picks up the Privacy Act unmodified; that Act, in turn, shelters personal records absent the consent of the person to whom the record pertains, unless disclosure would be required under the [FOIA].
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> "Once placed wholly within the FOIA's domain, the union requesting information relevant to collective bargaining stands in no better position than members of the general public. True, unions have a special interest in identifying and communicating with persons in the bar-

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[7] In this regard, see *Department of Veterans Affairs*, 958 F. 2d, at 512 ("Nowhere in the [Labor Statute] does its language indicate that the disclosure calculus required by FOIA should be modified. Nowhere do we find a qualification that the policies of collective bargaining should be integrated into FOIA"); *Department of Treasury*, 884 F. 2d, at 1453 ("Privacy Act exception b(2) speaks only of FOIA. We do not believe we are entitled to engage in the sort of imaginative reconstruction that would be necessary to introduce collective bargaining values into the [FOIA] balancing process").

> gaining unit, an interest initially accommodated by [the Labor Statute]. The bargaining process facilitation interest is ultimately unavailing, however, because it 'falls outside the ambit of the public interest that the FOIA was enacted to serve,' *i. e.*, the interest in advancing 'public understanding of the operation or activities of the government.'" 884 F. 2d, at 1457 (quoting *Reporters Comm., supra*, at 775).

Against the virtually nonexistent FOIA-related public interest in disclosure, we weigh the interest of bargaining unit employees in nondisclosure of their home addresses. Cf. *Department of State* v. *Ray*, 502 U. S. 164, 173–177 (1991); *Rose*, 425 U. S., at 372. Because a very slight privacy interest would suffice to outweigh the relevant public interest, we need not be exact in our quantification of the privacy interest. It is enough for present purposes to observe that the employees' interest in nondisclosure is not insubstantial.

It is true that home addresses often are publicly available through sources such as telephone directories and voter registration lists, but "[i]n an organized society, there are few facts that are not at one time or another divulged to another." *Reporters Comm., supra*, at 763. The privacy interest protected by Exemption 6 "encompass[es] the individual's control of information concerning his or her person." 489 U. S., at 763. An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form. Here, for the most part, the unions seek to obtain the addresses of nonunion employees who have decided not to reveal their addresses to their exclusive representative. See n. 5, *supra*. Perhaps some of these individuals have failed to join the union that represents them due to lack of familiarity with the union or its services. Others may be opposed to their union or to unionism in general on practical or ideological grounds.

Whatever the reason that these employees have chosen not to become members of the union or to provide the union with their addresses, however, it is clear that they have *some* nontrivial privacy interest in nondisclosure, and in avoiding the influx of union-related mail, and, perhaps, union-related telephone calls or visits, that would follow disclosure.[8]

Many people simply do not want to be disturbed at home by work-related matters. Employees can lessen the chance of such unwanted contacts by not revealing their addresses to their exclusive representative. Even if the direct union/employee communication facilitated by the disclosure of home addresses were limited to mailings, this does not lessen the interest that individuals have in preventing at least some unsolicited, unwanted mail from reaching them at their homes. We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions. Cf. *Rowan* v. *United States Post Office Dept.*, 397 U. S. 728, 737 (1970); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting). Moreover, when we consider that other parties, such as commercial advertisers and solicitors, must have the same access under FOIA as the unions to the employee address lists sought in this case, see *supra*, at 496, 499, it is clear that the individual privacy interest that would be protected by nondisclosure is far from insignificant.

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[8] Even the Authority has recognized that "employees have some privacy interest in their home addresses." Brief for Federal Respondent 41 (citing *Department of Navy, Portsmouth Naval Shipyard, Portsmouth, N. H.*, 37 F. L. R. A. 515, 532 (1990)). The Courts of Appeals that have considered the question have reached the same conclusion, although they have differed in their characterization of the magnitude of the interest implicated. See, *e. g., FLRA* v. *Department of Defense*, 977 F. 2d 545, 549 (CA11 1992) ("important" privacy interest); *FLRA* v. *Department of Navy*, 966 F. 2d 747, 759 (CA3 1992) (en banc) ("minimal" interest); *Department of Veterans Affairs, supra*, at 510 ("general privacy interest" in preventing dissemination of home address); *Department of Treasury, supra*, at 1453 ("significant" interest).

Because the privacy interest of bargaining unit employees in nondisclosure of their home addresses substantially outweighs the negligible FOIA-related public interest in disclosure, we conclude that disclosure would constitute a "clearly unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(6). FOIA, thus, does not require the agencies to divulge the addresses, and the Privacy Act, therefore, prohibits their release to the unions.

IV

Respondents argue that our decision will have a number of untoward effects. First, they contend that without access to home addresses, public sector unions will be unable to communicate with, and represent effectively, *all* bargaining unit employees. Such a result, they believe, thwarts the collective-bargaining policies explicitly embodied in the Labor Statute. See, *e. g.,* 5 U. S. C. § 7101(a) (congressional finding that "labor organizations and collective bargaining in the civil service are in the public interest"). According to respondents, it is illogical to believe that Congress intended the Privacy Act and FOIA to be interpreted in a manner that hinders the effectuation of the purposes motivating the Labor Statute.

Respondents, however, place undue emphasis on what they perceive to be the impulses of the Congress that enacted the Labor Statute, and neglect to consider the language in that statute that calls into play the limitations of the Privacy Act. Speculation about the ultimate goals of the Labor Statute is inappropriate here; the statute plainly states that an agency need furnish an exclusive representative with information that is necessary for collective-bargaining purposes *only* "to the extent not prohibited by law." 5 U. S. C. § 7114(b)(4). Disclosure of the addresses in this case is prohibited "by law," the Privacy Act. By disallowing disclosure, we do no more than give effect to the clear words of the provisions we construe, including the Labor Statute. Cf. *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there").

Second, respondents fear that our ruling will allow agencies, acting pursuant to the Privacy Act, to refuse to provide unions with other employee records, such as disciplinary reports and performance appraisals, that the unions need in order to perform their duties as exclusive bargaining representatives. This concern is not presented in this case, however, and we do not address it.

Finally, respondents contend that our decision creates an unnecessary and unintended disparity between public and private sector unions. While private sector unions assertedly are entitled to receive employee home address lists from employers under the National Labor Relations Act, as interpreted by the National Labor Relations Board,[9] respondents claim that federal sector unions now will be needlessly barred from obtaining this information, despite the lack of any indication that Congress intended such a result. See *Department of Treasury*, 884 F. 2d, at 1457–1461 (R. Ginsburg, J., concurring). We do not question that, as a general matter, private sector labor law may provide guidance in parallel public sector matters. This fact has little relevance here, however, for unlike private sector employees, federal employees enjoy the protection of the Privacy Act, and that statute prohibits the disclosure of the address lists sought in this case. To the extent that this prohibition leaves public sector unions in a position different from that of their private sector counterparts, Congress may correct the disparity. Cf. *Sedima, S. P. R. L.* v. *Imrex Co.*, 473 U. S. 479, 499 (1985).

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[9] See, *e. g., NLRB* v. *Associated Gen. Contractors of Cal., Inc.*, 633 F. 2d 766, 773 (CA9 1980), cert. denied, 452 U. S. 915 (1981); *NLRB* v. *Pearl Bookbinding Co.*, 517 F. 2d 1108, 1113 (CA1 1975).

V

For the foregoing reasons, the judgment of the Court of Appeals is reversed.

So ordered.

JUSTICE SOUTER, concurring.

I join the Court's opinion with the understanding that it does not ultimately resolve the relationship between the Federal Service Labor-Management Relations Statute (Labor Statute) and all of the Privacy Act of 1974 exceptions potentially available to respondents, and that any more general language in the opinion is limited, as the Court notes, to the relationship between the Labor Statute and the Freedom of Information Act exception to the Privacy Act at issue here. See *ante*, at 494, n. 5.

JUSTICE GINSBURG, concurring in the judgment.

Before this Court's decision in *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749 (1989), every court to consider the issue presented in this case reached a conclusion opposing the one the Court announces today: The courts uniformly enforced, against Privacy Act challenges, Federal Labor Relations Authority (Authority) orders directing agencies to disclose the names and addresses of bargaining unit employees to the employees' exclusive bargaining representative.[1] In these judgments, the Courts of Appeals deferred to the Authority's expert determination that disclosure was necessary to vindicate the public interest in promoting federal-sector collective bargaining—the interest Congress identified when it enacted the Federal Service Labor-Management Relations Statute (Labor Statute).[2]

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[1] See *Department of Navy* v. *FLRA*, 840 F. 2d 1131 (CA3), cert. dism'd, 488 U. S. 881 (1988); *Department of Air Force, Scott Air Force Base* v. *FLRA*, 838 F. 2d 229 (CA7), cert. dism'd, 488 U. S. 880 (1988); *Department of Agriculture* v. *FLRA*, 836 F. 2d 1139 (CA8 1988), vacated and remanded, 488 U. S. 1025 (1989); *Department of Health and Human Services* v. *FLRA*, 833 F. 2d 1129 (CA4 1987), cert. dism'd, 488 U. S. 880 (1988). See also *American Federation of Govt. Employees, Local 1760* v. *FLRA*, 786 F. 2d 554 (CA2 1986) (requiring FLRA to order disclosure).

The Privacy Act interposed no bar to disclosure under the Labor Statute, these courts reasoned, because the Privacy Act allows disclosure when the Freedom of Information Act (FOIA) so requires, see 5 U. S. C. § 552a(b)(2), and the FOIA balancing of public interest in disclosure against the asserted privacy interest, see *ante*, at 495, tipped decisively in favor of disclosure. The public interest the Courts of Appeals balanced was the promotion of collective bargaining; the privacy interest, keeping employees' names and addresses from their bargaining representative.

Reporters Committee, however, changed the FOIA calculus that underlies these prodisclosure decisions. In *Reporters Committee*, the Court adopted a restrictive definition of the "public interest in disclosure," holding that interest to be circumscribed by FOIA's "core purpose": the purpose of "open[ing] agency action to the light of public scrutiny" and advancing "public understanding of the operations or activities of the government." 489 U. S., at 774–776 (internal quotation marks and emphasis omitted). As the Court observes today, disclosure of employees' home addresses to their bargaining representatives would not advance this purpose. See *ante*, at 497. With *Reporters Committee* as its guide, the Court traverses the "convoluted path of statutory cross-references," *ante*, at 495, from the Labor Statute to the Privacy Act to FOIA, and the Court's journey ends in a judgment that disclosure is impermissible.[3]

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[2] See 5 U. S. C. § 7101(a) ("labor organizations and collective bargaining in the civil service are in the public interest"); § 7114(b)(4)(B) (agency must disclose information "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining," unless disclosure is "prohibited by law").

The Court convincingly demonstrates that *Reporters Committee,* unmodified, requires this result. I came to the same conclusion as a judge instructed by the Court's precedent. See *FLRA* v. *Department of Treasury, Financial Mgmt. Service,* 884 F. 2d 1446, 1457 (CADC 1989) (concurring opinion), cert. denied, 493 U. S. 1055 (1990), quoted *ante,* at 499–500. It seemed to me then and seems to me now, however, that Congress did not chart our journey's end. See 884 F. 2d, at 1457–1461.

As this Court has recognized, in enacting the Labor Statute "Congress unquestionably intended to strengthen the position of federal unions." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA,* 464 U. S. 89, 107 (1983). It is surely doubtful that, in the very statute bolstering federal-sector unions, Congress aimed to deny those unions information their private-sector counterparts routinely receive. See, *e. g., Prudential Ins. Co. of Am.* v. *NLRB,* 412 F. 2d 77 (CA2), cert. denied, 396 U. S. 928 (1969); see also *NLRB* v. *Wyman-Gordon Co.,* 394 U. S. 759 (1969) (upholding National Labor Relations Board order requiring employer to disclose names and addresses before election). It is similarly doubtful that Congress intended a privacy interest, appraised by most courts as relatively modest,[4] to trump the Legislature's firmly declared interest in promoting federal-sector collective bargaining. I do not agree with the Court, see *ante*, at 498–499, that the *Reporters Committee* rule yielding these anomalies is indubitably commanded by FOIA.[5]

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[3] The Court does not reach the issue whether the "routine use" exception to the Privacy Act, see 5 U. S. C. § 552a(b)(3), might justify disclosure. See *ante,* at 494, n. 5. The "routine use" exception is not a secure one for the unions, however, because it empowers agencies, in the first instance, to determine which uses warrant the classification "routine," and because courts ordinarily defer to agency assessments of this order. But cf. *United States Postal Service* v. *National Assn. of Letter Carriers,* 9 F. 3d 138, 143 (CADC 1993) (opinion of Silberman, J.) (suggesting that National Labor Relations Act disclosure obligations might compel the Postal Service "to publish a routine use notice that would accommodate its duties under that Act").

The *Reporters Committee* "core purpose" limitation is not found in FOIA's language. A FOIA requester need not show in the first instance that disclosure would serve any public purpose, let alone a "core purpose" of "open[ing] agency action to the light of public scrutiny" or advancing "public understanding of the operations or activities of the government." Instead, "[a]n agency must disclose agency records to any person . . . 'unless [the records] may be withheld pursuant to one of the nine enumerated exemptions listed in § 552(b).'" *Department of Justice* v. *Tax Analysts*, 492 U. S. 136, 150–151 (1989), quoting *Department of Justice*

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[4] Compare *FLRA* v. *Department of Navy, Navy Ships Parts Control Center*, 966 F. 2d 747, 759 (CA3 1992) (en banc) ("minimal" privacy interest); *FLRA* v. *Department of Navy, Navy Resale and Services Support Office*, 958 F. 2d 1490, 1496 (CA9 1992) ("minimal"); *FLRA* v. *Department of Veterans Affairs*, 958 F. 2d 503, 511 (CA2 1992) ("more than *de minimis*"); *FLRA* v. *Department of Navy, Naval Communications Unit Cutler*, 941 F. 2d 49, 56 (CA1 1991) ("modest"); *Department of Air Force, Scott Air Force Base* v. *FLRA*, 838 F. 2d 229, 232 (CA7) ("minuscule"), cert. dism'd, 488 U. S. 880 (1988); *Department of Agriculture* v. *FLRA*, 836 F. 2d 1139, 1143 (CA8 1988) ("modest"), vacated and remanded, 488 U. S. 1025 (1989); *American Federation of Govt. Employees, Local 1760* v. *FLRA*, 786 F. 2d 554, 556 (CA2 1986) ("not particularly compelling"), with *FLRA* v. *Department of Defense, Department of Navy, Pensacola Navy Exchange*, 977 F. 2d 545, 549 (CA11 1992) ("important").

[5] I do not question the result in *Reporters Committee*, shielding under FOIA exemption 7(C), 5 U. S. C. § 552(b)(7)(C), scattered bits of information relevant to criminal matters compiled in FBI "rap sheets." See *FLRA* v. *Department of Treasury, Financial Mgmt. Service*, 884 F. 2d 1446, 1460 (R. B. Ginsburg, J., concurring) ("privacy invasion threatened by release [to the union] of the bare names and addresses [of bargaining unit employees] pales in comparison to the privacy invasion threatened by [public] release of the rap sheet").

v. *Julian,* 486 U. S. 1, 8 (1988). In *Tax Analysts,* for example, the Court required disclosure of Department of Justice compilations of district court tax decisions to the publishers of Tax Notes, a weekly magazine. That disclosure did not notably "ad[d] . . . to public knowledge of Government operations." 492 U. S., at 156–157 (BLACKMUN, J., dissenting) (required disclosure "adds nothing whatsoever to public knowledge of Government operations").

Just as the FOIA requester confronts no "core purpose" obstacle at the outset, no such limitation appears in the text of any FOIA exemption. The exemption asserted in this case, for example, provides that an agency may withhold information if disclosure "would constitute a clearly unwarranted invasion of personal privacy." 5 U. S. C. § 552(b)(6). It is fully consistent with this statutory language to judge an invasion of personal privacy "warranted," courts held pre-*Reporters Committee,* even if the disclosure sought is unrelated to informing citizens about Government operations. Courts, on the issue before us, found disclosure in order because the information was deemed necessary by the expert Authority to vindicate an interest specifically identified by Congress in the Labor Statute—the interest in promoting federal-sector collective bargaining.

Such an interpretation is reconcilable with a main rule that the identity and particular purpose of the requester is irrelevant under FOIA. See *ante,* at 496. This main rule serves as a check against selection among requesters, by agencies and reviewing courts, according to idiosyncratic estimations of the request's or requester's worthiness. In the matter at hand, however, it is Congress that has declared the importance of the request's purpose, and Congress that has selected a single entity—the employees' exclusive bargaining representative—as entitled to assert that purpose. Allowing consideration of the public interest Congress has recognized would distinguish among potential requesters on the basis of the interest they assert, not simply their identity or particular purpose. See *FLRA* v. *Department of Navy, Navy Resale and Services Support Office,* 958 F. 2d 1490, 1495 (CA9 1992) (cautioning against "confus[ing] the identity of the requester with the interest asserted by the requester").

I am mindful, however, that the preservation of *Reporters Committee,* unmodified, is the position solidly approved by my colleagues, and I am also mindful that the pull of precedent is strongest in statutory cases. See *Burnet* v. *Coronado Oil & Gas Co.,* 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting); *Di Santo* v. *Pennsylvania,* 273 U. S. 34, 42 (1927) (Brandeis, J., dissenting). I therefore concur in the Court's judgment, recognizing that, although today's decision denies federal-sector unions information accessible to their private-sector counterparts, "Congress may correct the disparity." *Ante,* at 503.

ELDER *v.* HOLLOWAY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–8579. Argued January 10, 1994—Decided February 23, 1994

Petitioner Elder was arrested without a warrant after respondents, Idaho police officers, surrounded his house and ordered him to come out. Alleging that the arrest violated his Fourth Amendment right to be secure against unreasonable seizure, Elder sued the officers for damages under 42 U. S. C. § 1983. The officers raised the defense of qualified immunity, which shields public officials from actions for damages unless their conduct was unreasonable in light of clearly established law. The District Court found the law clear that, absent exigent circumstances, a warrant would have been required had the arrest occurred inside the house. The court found it unclear, however, whether a warrant was needed when officers surrounded a house and requested an individual to come out and surrender. Finding no controlling state or Ninth Circuit case law, the court granted summary judgment for respondents. On appeal, the Court of Appeals noticed Ninth Circuit precedent in point missed in the District Court. *United States* v. *Al-Azzawy,* 784 F. 2d 890, the Court of Appeals thought, might have alerted a reasonable officer to the constitutional implications of putting a suspect under arrest outside a surrounded house. The court held, however, that the *Al-Azzawy* decision could not be used to Elder's advantage. Although typing the qualified immunity inquiry a pure question of law, the court read this Court's decision in *Davis* v. *Scherer,* 468 U. S. 183, to require plaintiffs to present to the district court, as "legal facts," the cases showing that the right asserted was clearly established. Just as appellants forfeit facts not presented to the court of first instance, the Court of Appeals reasoned, so, in the peculiar context of civil rights qualified immunity litigation, a plaintiff may not benefit on appeal from a precedent neither he nor the district court itself mentioned in the first instance.

Held: Appellate review of qualified immunity dispositions must be conducted in light of all relevant precedents, not simply those cited to, or discovered by, the district court. The rule declared by the Court of Appeals in this case does not aid the qualified immunity doctrine's central objective—to protect public officials from undue interference with their duties and from potentially disabling threats of liability—because its operation is unpredictable in advance of the district court's adjudication. Nor does the rule further the interest in deterring public officials' unlawful actions and compensating victims of such conduct. Instead, it simply releases defendants because of shortages in counsels' or the court's legal research or briefing. The decision in *Davis* v. *Scherer, supra,* was misconstrued by the Court of Appeals. *Davis* did not concern what authorities a court may consider in determining qualified immunity. The Court held in *Davis* only this: To defeat qualified immunity, the federal right on which the claim for relief is based—rather than some other right—must be clearly established. Whether a federal right was clearly established at a particular time is a question of law, not "legal facts," and must be resolved *de novo* on appeal. A court of appeals reviewing a qualified immunity judgment should therefore use its full knowledge of its own and other relevant precedents. It is left to the Court of Appeals to consider, in light of all relevant authority, including *Al-Azzawy,* whether respondents are entitled to prevail on their qualified immunity defense. Pp. 514–516.

975 F. 2d 1388, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Michael E. Tankersley argued the cause for petitioner. With him on the briefs were *Brian Wolfman, Alan B. Morrison,* and *John C. Lynn,* appointed by this Court, 510 U. S. 806.

James J. Davis argued the cause and filed a brief for respondents.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case* presents the question whether an appellate court, reviewing a judgment according public officials qualified immunity from a damages suit charging violation of a federal right, must disregard relevant legal authority not presented to, or considered by, the court of first instance. We hold that appellate review of qualified immunity dispositions is to be conducted in light of all relevant precedents, not simply those cited to, or discovered by, the district court.

**Andrew J. Pincus* and *Steven R. Shapiro* filed a brief for the American Civil Liberties Union as *amicus curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Hawaii et al. by *Robert A. Marks,* Attorney General of Hawaii, and *Steven S. Michaels,* Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Charles M. Oberly III* of Delaware, *Larry EchoHawk* of Idaho, *Roland W. Burris* of Illinois, *Robert T. Stephan* of Kansas, *Scott Harshbarger* of Massachusetts, *Joseph P. Mazurek* of Montana, *Ernest D. Preate, Jr.,* of Pennsylvania, *Jefferey B. Pine* of Rhode Island, *Jeffrey L. Amestoy* of Vermont, *Joseph B. Meyer* of Wyoming, and *Malaetasi Togafau* of American Samoa.

I

In April 1987, police officers in Idaho learned that Charles Elder was wanted by Florida authorities. They set out to arrest Elder, but did not obtain an Idaho arrest warrant. The officers planned to apprehend Elder at his workplace, in a public area where a warrant is not required. See *United States* v. *Watson*, 423 U. S. 411, 418, n. 6 (1976). Finding that Elder had already left his jobsite, the officers surrounded the house in which he resided and ordered him to come out. Elder suffered epileptic seizures during the episode, and an officer instructed him to crawl out of the house to avoid injury from falling. Elder, instead, walked through the doorway, immediately suffered another seizure, and fell on the concrete walk in front of the house. He sustained serious brain trauma and remains partially paralyzed.

II

Alleging that the warrantless arrest violated his Fourth Amendment right to be secure against unreasonable seizure, Elder sued the arresting officers for damages under 42 U. S. C. § 1983. The doctrine of qualified immunity shields public officials like respondents from damages actions unless their conduct was unreasonable in light of clearly established law. The District Court analyzed Elder's case in three steps. Had the arrest occurred inside the house, that court recognized, clear law would come into play: absent exigent circumstances, an arrest warrant would have been required. See 751 F. Supp. 858, 860 (Idaho 1990) (citing *Payton* v. *New York*, 445 U. S. 573 (1980)). *If* the same clear law governed

Elder's arrest as it in fact transpired, the District Court said, then the matter of exigent circumstances would present a triable issue. 751 F. Supp., at 865.[1] But, the District Court concluded, it was not clear that the warrant requirement applied when officers surrounded a house and requested an individual inside to come out and surrender. For that scenario, the one presented here, the District Court "found no controlling Idaho or Ninth Circuit case law." *Id.*, at 866. The District Court accordingly granted summary judgment for the officers on qualified immunity grounds. See, *e. g., Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982) (officials "are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known").

On appeal, the Ninth Circuit noticed precedent in point missed in the District Court: *United States* v. *Al-Azzawy*, 784 F. 2d 890 (CA9 1985), cert. denied, 476 U. S. 1144 (1986). *Al-Azzawy*, the Court of Appeals observed, involved a suspect seized outside his surrounded home. The *Al-Azzawy* decision, published over a year before Elder's arrest, "might have alerted a reasonable officer to the constitutional implications of putting a suspect under arrest after he had come outside his house pursuant to an order to exit." 975 F. 2d 1388, 1391–1392 (1991).[2] Indeed, *Al-Azzawy* explicitly "reaffirmed the rule that 'it is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home.' [*Al-Azzawy*, 784

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[1] According to depositions before the District Court, Elder had access to guns in the house, a consideration that might support an exigent circumstances plea. On the other hand, the police started to plan for the arrest five days before it occurred, a factor that might tug against a finding of exigency.

[2] Elder's brief in the Court of Appeals did cite *Al-Azzawy*, albeit without elaboration. Brief for Appellant in No. 91–35146 (CA9), p. 9. There was cause for Elder's caution: The ultimate holding of *Al-Azzawy* was that exigent circumstances justified the warrantless arrest. Cf. n. 1, *supra*.

F. 2d, at 893] (quoting *United States* v. *Johnson,* 626 F. 2d 753, 757 (9th Cir. 1980), *aff'd on other grounds,* 457 U. S. 537 . . . (1982))." 975 F. 2d, at 1391.

Elder could not benefit from the rule reaffirmed in *Al-Azzawy,* the Court of Appeals believed, because that precedent had been unearthed too late. For the conclusion that cases unmentioned in the District Court could not control on appeal, the Court of Appeals relied on *Davis* v. *Scherer,* 468 U. S. 183 (1984), in particular, on this statement from *Davis:* "A plaintiff who seeks damages for violation of constitutional or statutory rights may overcome the defendant official's qualified immunity only by *showing* that those rights were clearly established at the time of the conduct at issue." *Id.,* at 197 (emphasis added).

Although typing the qualified immunity inquiry "a 'pure questio[n] of law,'" 975 F. 2d, at 1392 (quoting *Romero* v. *Kitsap County,* 931 F. 2d 624, 627–628 (CA9 1991)), the Court of Appeals read *Davis* to require plaintiffs to put into the district court record, as "legal facts," the cases showing that the right asserted was "clearly established." 975 F. 2d, at 1394. Just as appellants forfeit facts not presented to the court of first instance, the Ninth Circuit reasoned, so, in the peculiar context of civil rights qualified immunity litigation, a plaintiff may not benefit on appeal from precedent neither he nor the district court itself mentioned in the first instance: "[T]he plaintiff's burden in responding to a request for judgment based on qualified immunity is to identify the universe of statutory or decisional law from which the [district] court can determine whether the right allegedly violated was clearly established." *Id.,* at 1392. We granted certiorari, 509 U. S. 921 (1993).

III

The central purpose of affording public officials qualified immunity from suit is to protect them "from undue interference with their duties and from potentially disabling threats of liability." *Harlow* v. *Fitzgerald,* 457 U. S., at 806. The rule announced by the Ninth Circuit does not aid this objective because its operation is unpredictable in advance of the district court's adjudication. Nor does the rule further the interests on the other side of the balance: deterring public officials' unlawful actions and compensating victims of such conduct. Instead, it simply releases defendants because of shortages in counsel's or the court's legal research or briefing.[3]

In thinking its rule compelled by this Court's instruction, the Ninth Circuit misconstrued *Davis* v. *Scherer.* The Court held in *Davis* that an official's clear violation of a state administrative regulation does not allow a § 1983 plaintiff to overcome the official's qualified immunity. Only in this context is the Court's statement comprehensible: "A plaintiff who seeks damages for violation of constitutional or statutory rights may overcome the defendant official's qualified immunity only by showing that *those* rights were clearly established. . . ." *Davis* v. *Scherer*, 468 U. S., at 197 (emphasis added). *Davis,* in short, concerned not the authorities a court may consider in determining qualified immunity, but this entirely discrete question: Is qualified immunity defeated where a defendant violates *any* clearly established duty, including one under state law, or must the clearly established right be the federal right on which the claim for relief is based? The Court held the latter. *Id.*, at 193–196, and n. 14; see 984 F. 2d 991, 995 (CA9 1993) (Kozinski, J., dissenting from denial of reh'g en banc).

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[3] The Ninth Circuit's rule could have a number of untoward effects. It could occasion appellate affirmation of incorrect legal results, see 984 F. 2d 991, 998–999 (CA9 1993) (Kozinski, J., dissenting from denial of reh'g en banc), and it could place defense counsel in a trying situation. See ABA Model Rule of Professional Conduct 3.3(a) (1989 ed.) ("A lawyer shall not knowingly: . . . (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.").

Whether an asserted federal right was clearly established at a particular time, so that a public official who allegedly violated the right has no qualified immunity from suit, presents a question of law, not one of "legal facts." See *Mitchell* v. *Forsyth,* 472 U. S. 511, 528 (1985); *Harlow* v. *Fitzgerald,* 457 U. S., at 818. That question of law, like the generality of such questions, must be resolved *de novo* on appeal. See, *e. g., Pierce* v. *Underwood,* 487 U. S. 552, 558 (1988). A court engaging in review of a qualified immunity judgment should therefore use its "full knowledge of its own [and other relevant] precedents." See *Davis,* 468 U. S., at 192, n. 9.

We leave it to the Court of Appeals to consider, in light of all relevant authority, including *Al-Azzawy,* whether the respondent officers are entitled to prevail on their qualified immunity defense. We express no opinion on that ultimate issue, nor do we consider whether the officers' alternate plea of exigent circumstances is tenable.

* * *

For the reasons stated, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

FOGERTY *v.* FANTASY, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 92–1750. Argued December 8, 1993—Decided March 1, 1994

After petitioner Fogerty's successful defense of a copyright infringement action filed against him by respondent Fantasy, Inc., the District Court denied his motion for attorney's fees pursuant to 17 U. S. C. § 505, which provides in relevant part that in such an action "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs." The Court of Appeals affirmed, declining to abandon its "dual" standard for awarding § 505 fees—under which prevailing plaintiffs are generally awarded attorney's fees as a matter of course, while defendants must show that the original suit was frivolous or brought in bad faith—in favor of the so-called "evenhanded" approach, in which no distinction is made between prevailing plaintiffs and prevailing defendants.

Held: Prevailing plaintiffs and prevailing defendants must be treated alike under § 505; attorney's fees are to be awarded to prevailing parties only as a matter of the court's discretion. Pp. 522–535.

(a) Fantasy's arguments in favor of a dual standard are rejected. Section 505's language gives no hint that successful plaintiffs are to be treated differently than successful defendants. Nor does this Court's decision in *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412, which construed virtually identical language from Title VII of the Civil Rights Act of 1964, support different treatment. The normal indication that fee-shifting statutes with similar language should be interpreted alike is overborne by factors relied upon in *Christiansburg* and the Civil Rights Act which are noticeably absent in the context of the Copyright Act. The legislative history of § 505 provides no support for different treatment. In addition, the two Acts' goals and objectives are not completely similar. The Civil Rights Act provides incentives for the bringing of meritorious lawsuits by impecunious "private attorney general" plaintiffs who can ill afford to litigate their claims against defendants with more resources. However, the Copyright Act's primary objective is to encourage the production of original literary, artistic, and musical expression for the public good; and plaintiffs, as well as defendants, can run the gamut from corporate behemoths to starving artists. Fantasy's argument that the dual approach to § 505 best serves the Copyright Act's policy of encouraging litigation of meritorious infringement claims expresses a one-sided view of the Copyright Act's purposes. Because copyright law ultimately serves the purpose of enriching the general public through access to creative works, it is peculiarly important that the law's boundaries be demarcated as clearly as possible. Thus, a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious infringement claims. Fantasy also errs in urging that the legislative history supports the dual standard based on the principle of ratification. Neither the two studies submitted to Congress while it considered revisions to the Act, nor the cases referred to in those studies, support the view that there was a settled construction in favor of the dual standard under the virtually identical provision in the 1909 Copyright Act. Pp. 522–533.

(b) Also rejected is Fogerty's argument that § 505 enacted the "British Rule," which allows for automatic recovery of attorney's fees by prevailing plaintiffs and defendants, absent exceptional circumstances. The word "may" in § 505 clearly connotes discretion in awarding such fees, and an automatic award would pretermit the exercise of that discretion. In addition, since Congress legislates against the strong background of the American Rule—which requires parties to bear their own attorney's fees unless Congress provides otherwise—it would have surely drawn more explicit statutory language and legislative comment had it intended to adopt the British Rule in § 505. While there is no precise rule or formula for making fee determinations under § 505, equitable discretion should be exercised "in light of the considerations [this Court] has identified." *Hensley* v. *Eckerhart*, 461 U. S. 424, 436–437. Pp. 533–535.

984 F. 2d 1524, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 535.

Kenneth I. Sidle argued the cause for petitioner. With him on the briefs were *Vincent H. Chieffo* and *Julia L. Ross*.

Lawrence S. Robbins argued the cause for respondent. With him on the brief were *Carlos T. Angulo*, *Malcolm Burnstein*, and *Norman G. Rudman*.*

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[*] Jonathan A. Marshall, William G. Pecau, Jon R. Stark, Stephen P. Fox, and *Roland I. Griffin* filed a brief for Hewlett-Packard Co. as *amicus curiae* urging reversal.

Jack E. Brown, Chris R. Ottenweller, and *Charles A. Blanchard* filed a brief for Apple Computer, Inc., as *amicus curiae* urging affirmance.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Copyright Act of 1976, 17 U. S. C. § 505, provides in relevant part that in any copyright infringement action "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs."[1] The question presented in this case is what standards should inform a court's decision to award attorney's fees to a prevailing defendant in a copyright infringement action—a question that has produced conflicting views in the Courts of Appeals.

Petitioner John Fogerty is a successful musician, who, in the late 1960's, was the lead singer and songwriter of a popular music group known as "Creedence Clearwater Revival."[2] In 1970, he wrote a song entitled "Run Through the Jungle" and sold the exclusive publishing rights to predecessors-in-interest of respondent Fantasy, Inc., who later obtained the copyright by assignment. The music group disbanded in 1972 and Fogerty subsequently published under another recording label. In 1985, he published and registered a copyright to a song entitled "The Old Man Down the Road," which was released on an album distributed by Warner Brothers Records, Inc. Respondent Fantasy, Inc., sued Fogerty, Warner Brothers, and affiliated companies[3] in District Court, alleging that "The Old Man Down the Road" was merely "Run Through the Jungle" with new words.[4] The copyright infringement claim went to trial and a jury returned a verdict in favor of Fogerty.

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[1] The section provides in full: "In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U. S. C. § 505.

[2] Creedence Clearwater Revival (CCR), recently inducted into the Rock and Roll Hall of Fame, has been recognized as one of the greatest American rock and roll groups of all time. With Fogerty as its leader, CCR developed a distinctive style of music, dubbed "swamp rock" by the media due to its southern country and blues feel. Brief for Petitioner 4–5; see also Questions and Answers with John Fogerty, Los Angeles Times, Jan. 12, 1993, section F, p. 1, col. 2.

After his successful defense of the action, Fogerty moved for reasonable attorney's fees pursuant to 17 U. S. C. § 505. The District Court denied the motion, finding that Fantasy's infringement suit was not brought frivolously or in bad faith as required by Circuit precedent for an award of attorney's fees to a successful defendant.[5] The Court of Appeals affirmed, 984 F. 2d 1524 (CA9 1993), and declined to abandon the existing Ninth Circuit standard for awarding attorney's fees which treats successful plaintiffs and successful defendants differently. Under that standard, commonly termed the "dual" standard, prevailing plaintiffs are generally awarded attorney's fees as a matter of course, while prevailing defendants must show that the original suit was frivolous or brought in bad faith.[6] In contrast, some Courts of Appeals follow the so-called "evenhanded" approach in which no distinction is made between prevailing plaintiffs and prevailing defendants.[7] The Court of Appeals for the Third Circuit, for example, has ruled that "we do not require bad faith, nor do we mandate an allowance of fees as a concomitant of prevailing in every case, but we do favor an evenhanded approach." *Lieb* v. *Topstone Industries, Inc.*, 788 F. 2d 151, 156 (1986).

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[3] Pursuant to an agreement between Fogerty and the Warner defendants, Fogerty indemnified and reimbursed the Warner defendants for their attorney's fees and costs incurred in defending the copyright infringement action. Brief for Petitioner 4, n. 3.

[4] In addition to the copyright infringement claim, Fantasy asserted state law and Lanham Act claims. These claims were voluntarily dismissed before trial. Petitioner also asserted various counterclaims against Fantasy, which were ultimately dismissed on Fantasy's motion for summary judgment. These related claims and counterclaims are not before this Court.

[5] In making its findings, the District Court stated: "Although the facts of this case did not present the textbook scenario of copyright infringement, the Court has held that Fogerty could indeed be held liable for copyright infringement even where he also wrote the song allegedly infringed. . . . Nor does Fantasy's 'knowledge of Fogerty's creativity' mean that this suit was brought in bad faith, where a finding of subconscious copying would have supported Fantasy's infringement claim." App. to Pet. for Cert. A–31 (citation omitted).

We granted certiorari, 509 U. S. 903 (1993), to address an important area of federal law and to resolve the conflict between the Ninth Circuit's "dual" standard for awarding attorney's fees under § 505, and the so-called "evenhanded" approach exemplified by the Third Circuit.[8] We reverse.

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[6] By predicating an award of attorney's fees to prevailing defendants on a showing of bad faith or frivolousness on the part of plaintiffs, the "dual" standard makes it more difficult for prevailing defendants to secure awards of attorney's fees than prevailing plaintiffs. The Ninth Circuit has explained that prevailing plaintiffs, on the other hand, should generally receive such awards absent special circumstances such as "the presence of a complex or novel issue of law that the defendant litigates vigorously and in good faith . . . ." *McCulloch* v. *Albert E. Price, Inc.*, 823 F. 2d 316, 323 (1987). In the instant case, the Court of Appeals explained: "The purpose of [the dual standard] rule is to avoid chilling a copyright holder's incentive to sue on colorable claims, and thereby to give full effect to the broad protection for copyrights intended by the Copyright Act." 984 F. 2d, at 1532.

[7] At oral argument, counsel for respondent voiced his dissatisfaction with the terms "dual" and "evenhanded" used to describe the differing rules in the Circuits. Tr. of Oral Arg. 31. Counsel objected to the implication from the terms—that the Ninth Circuit's dual standard was somehow not evenhanded or fair. While this point may be well taken in a rhetorical sense, we will continue to use the terms as commonly used by the lower courts for the sake of convenience.

[8] In addition to the Ninth Circuit, the Second, Seventh, and District of Columbia Circuits have adopted a "dual" standard of awarding attorney's fees whereby a greater burden is placed upon prevailing defendants than prevailing plaintiffs. See, *e. g.*, *Diamond* v. *Am-Law Publishing Corp.*,

Respondent advances three arguments in support of the dual standard followed by the Court of Appeals for the Ninth Circuit in this case. First, it contends that the language of § 505, when read in the light of our decisions construing similar fee-shifting language, supports the rule. Second, it asserts that treating prevailing plaintiffs and defendants differently comports with the "objectives" and "equitable considerations" underlying the Copyright Act as a whole. Finally, respondent contends that the legislative history of § 505 indicates that Congress ratified the dual standard which it claims was "uniformly" followed by the lower courts under identical language in the 1909 Copyright Act. We address each of these arguments in turn.

The statutory language—"the court may also award a reasonable attorney's fee to the prevailing party as part of the costs"—gives no hint that successful plaintiffs are to be treated differently from successful defendants. But respondent contends that our decision in *Christiansburg Garment Co.* v. *EEOC,* 434 U. S. 412 (1978), in which we construed virtually identical language, supports a differentiation in treatment between plaintiffs and defendants.

Christiansburg construed the language of Title VII of the Civil Rights Act of 1964, which in relevant part provided that the court, "in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs . . . ." 42 U. S. C. § 2000e–5(k). We had earlier held, interpreting the cognate provision of Title II of that Act, 42 U. S. C. § 2000a–3(b), that a prevailing plaintiff "should ordinarily

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745 F. 2d 142, 148–149 (CA2 1984); *Video Views, Inc.* v. *Studio 21, Ltd.,* 925 F. 2d 1010, 1022 (CA7), cert. denied, 502 U. S. 861 (1991); *Reader's Digest Assn., Inc.* v. *Conservative Digest, Inc.,* 821 F. 2d 800, 809 (CADC 1987). On the other hand, the Fourth and Eleventh Circuits have been identified as following an "evenhanded" approach similar to that of the Third Circuit. See, *e. g., Sherry Manufacturing Co.* v. *Towel King of Florida, Inc.,* 822 F. 2d 1031, 1034–1035, n. 3 (CA11 1987); *Cohen* v. *Virginia Electric & Power Co.,* 617 F. Supp. 619, 620–623 (ED Va. 1985), aff'd on other grounds, 788 F. 2d 247 (CA4 1986).

recover an attorney's fee unless some special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402 (1968). This decision was based on what we found to be the important policy objectives of the Civil Rights statutes, and the intent of Congress to achieve such objectives through the use of plaintiffs as "'private attorney[s] general.'" *Ibid.* In *Christiansburg, supra,* we determined that the same policy considerations were not at work in the case of a prevailing civil rights defendant. We noted that a Title VII plaintiff, like a Title II plaintiff in *Piggie Park,* is "the chosen instrument of Congress to vindicate 'a policy that Congress considered of the highest priority.'" 434 U. S., at 418. We also relied on the admittedly sparse legislative history to indicate that different standards were to be applied to successful plaintiffs than to successful defendants.

Respondent points to our language in *Flight Attendants* v. *Zipes*, 491 U. S. 754, 758, n. 2 (1989), that "fee-shifting statutes' similar language is a 'strong indication' that they are to be interpreted alike." But here we think this normal indication is overborne by the factors relied upon in our *Christiansburg* opinion that are absent in the case of the Copyright Act.[9] The legislative history of § 505 provides no support for treating prevailing plaintiffs and defendants differently with respect to the recovery of attorney's fees. The attorney's fees provision of § 505 of the 1976 Act was carried forward *verbatim* from the 1909 Act with very little discussion.[10] The relevant House Report provides simply:

> "Under section 505 the awarding of costs and attorney's fees are left to the court's discretion, and the section also makes clear that neither costs nor attorney's fees

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[9] Additionally, we note that Congress, in enacting § 505 of the 1976 Copyright Act, could not have been aware of the *Christiansburg* dual standard as *Christiansburg* was not decided until 1978.

[10] For the former provision under the Copyright Act of 1909, see 17 U. S. C. § 116 (1976 ed.).

> can be awarded to or against 'the United States or an officer thereof.'" H. R. Rep. No. 94–1476, p. 163 (1976).[11]

See also S. Rep. No. 94–473, p. 145 (1975) (same). Other courts and commentators have noted the paucity of legislative history of § 505. See, *e. g., Cohen* v. *Virginia Electric & Power Co.*, 617 F. Supp. 619, 621 (ED Va. 1985), aff'd on other grounds, 788 F. 2d 247 (CA4 1986). See also Jaszi, 505 And All That—The Defendant's Dilemma, 55 Law & Contemp. Prob. 107, 107–108, and nn. 1, 2 (1992).

The goals and objectives of the two Acts are likewise not completely similar. Oftentimes, in the civil rights context, impecunious "private attorney general" plaintiffs can ill afford to litigate their claims against defendants with more resources. Congress sought to redress this balance in part, and to provide incentives for the bringing of meritorious lawsuits, by treating successful plaintiffs more favorably than successful defendants in terms of the award of attorney's fees. The primary objective of the Copyright Act is to encourage the production of original literary, artistic, and musical expression for the good of the public. See *infra,* at 527. In the copyright context, it has been noted that "[e]ntities which sue for copyright infringement as plaintiffs can run the gamut from corporate behemoths to starving artists; the same is true of prospective copyright infringement defendants." *Cohen, supra,* at 622–623.

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[11] The 1976 Copyright Act did change, however, the standard for awarding costs to the prevailing party. The 1909 Act provided a mandatory rule that "full costs *shall* be allowed." 17 U. S. C. § 116 (1976 ed.) (emphasis added). The 1976 Act changed the rule from a mandatory one to one of discretion. As the 1909 Act indicates, Congress clearly knows how to use mandatory language when it so desires. That Congress did not amend the neutral language of the 1909 rule respecting attorney's fees lends further support to the plain language of § 505—district courts are to use their discretion in awarding attorney's fees and costs to the prevailing party.

We thus conclude that respondent's argument based on our fee-shifting decisions under the Civil Rights Act must fail.[12]

Respondent next argues that the policies and objectives of § 505 and of the Copyright Act in general are best served by the "dual approach" to the award of attorney's fees.[13] The most common reason advanced in support of the dual approach is that, by awarding attorney's fees to prevailing plaintiffs as a matter of course, it encourages litigation of meritorious claims of copyright infringement. See, *e. g., McCulloch* v. *Albert E. Price, Inc.*, 823 F. 2d 316, 323 (CA9 1987) ("Because section 505 is intended in part to encourage the assertion of colorable copyright claims, to deter infringement, and to make the plaintiff whole, fees are generally awarded to a prevailing plaintiff") (citations omitted); *Diamond* v. *Am-Law Publishing Corp.*, 745 F. 2d 142, 148 (CA2

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[12] We note that the federal fee-shifting statutes in the patent and trademark fields, which are more closely related to that of copyright, support a party-neutral approach. Those statutes contain language similar to that of § 505, with the added proviso that fees are only to be awarded in "exceptional cases." 35 U. S. C. § 285 (patent) ("The court in exceptional cases may award reasonable attorney fees to the prevailing party"); 15 U. S. C. § 1117 (trademark) (same). Consistent with the party-neutral language, courts have generally awarded attorney's fees in an evenhanded manner based on the same criteria. For patent, see, *e. g., Eltech Systems Corp.* v. *PPG Industries, Inc.*, 903 F. 2d 805, 811 (CA Fed. 1990) ("[T]here is and should be no difference in the standards applicable to patentees and infringers who engage in bad faith litigation"). For trademark, see, *e. g., Motown Productions, Inc.* v. *Cacomm, Inc.*, 849 F. 2d 781, 786 (CA2 1988) (exceptional circumstances include cases in which losing party prosecuted or defended action in bad faith); but see *Scotch Whisky Assn.* v. *Majestic Distilling Co.*, 958 F. 2d 594, 599 (CA4) (finding in the legislative history that prevailing defendants are to be treated more favorably than prevailing plaintiffs), cert. denied, 506 U. S. 862 (1992).

[13] Respondent points to four important interests allegedly advanced by the dual standard: (1) it promotes the vigorous enforcement of the Copyright Act; (2) it distinguishes between the wrongdoers and the blameless; (3) it enhances the predictability and certainty in copyrights by providing a relatively certain benchmark for the award of attorney's fees; and (4) it affords copyright defendants sufficient incentives to litigate their defenses.

1984) (same). Indeed, respondent relies heavily on this argument. We think the argument is flawed because it expresses a one-sided view of the purposes of the Copyright Act. While it is true that *one* of the goals of the Copyright Act is to discourage infringement, it is by no means the *only* goal of that Act. In the first place, it is by no means always the case that the plaintiff in an infringement action is the only holder of a copyright; often times, defendants hold copyrights too, as exemplified in the case at hand. See *Lieb* v. *Topstone Industries, Inc.*, 788 F. 2d, at 155 (noting that "in many cases the defendants are the [copyright] holders").

More importantly, the policies served by the Copyright Act are more complex, more measured, than simply maximizing the number of meritorious suits for copyright infringement. The Constitution grants to Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U. S. Const., Art. I, § 8, cl. 8. We have often recognized the monopoly privileges that Congress has authorized, while "intended to motivate the creative activity of authors and inventors by the provision of a special reward," are limited in nature and must ultimately serve the public good. *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 429 (1984). For example, in *Twentieth Century Music Corp.* v. *Aiken*, 422 U. S. 151, 156 (1975), we discussed the policies underlying the 1909 Copyright Act as follows:

> "The limited scope of the copyright holder's statutory monopoly . . . reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts. The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by

> this incentive, to stimulate artistic creativity for the general public good." (Footnotes omitted.)

We reiterated this theme in *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 349–350 (1991), where we said:

> "The primary objective of copyright is not to reward the labor of authors, but '[t]o promote the Progress of Science and useful Arts.' To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work." (Citations omitted.)

Because copyright law ultimately serves the purpose of enriching the general public through access to creative works, it is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible. To that end, defendants who seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement. In the case before us, the successful defense of "The Old Man Down the Road" increased public exposure to a musical work that could, as a result, lead to further creative pieces. Thus a successful defense of a copyright infringement action may further the policies of the Copyright Act every bit as much as a successful prosecution of an infringement claim by the holder of a copyright.

Respondent finally urges that the legislative history supports the dual standard, relying on the principle of ratification. See *Lorillard* v. *Pons*, 434 U. S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change . . ."). Respondent surveys the great number of lower court cases interpreting the identical provision in the 1909 Act, 17

U. S. C. § 116 (1976 ed.), and asserts that "it was firmly established" that prevailing defendants should be awarded attorney's fees only where the plaintiff's claim was frivolous or brought with a vexatious purpose. Brief for Respondent 40–45. Furthermore, respondent claims that Congress was aware of this construction of former § 116 because of two copyright studies submitted to Congress when it was studying revisions to the Act. W. Strauss, Damage Provisions of the Copyright Law, Study No. 22 (hereinafter Strauss Study), and R. Brown, Operation of the Damage Provisions of the Copyright Law: An Exploratory Study, Study No. 23 (hereinafter Brown Study), Studies Prepared for Subcommittee on Patents, Trademarks, and Copyrights, 86th Cong., 2d Sess. (H. Judiciary Comm. Print 1960).

Before turning to the import of the two studies and the cases decided under the 1909 Act, we summarize briefly the factual background of *Lorillard,* whence comes the statement upon which respondent relies. There the question was whether there was a right to jury trial in an action for lost wages under the Age Discrimination in Employment Act of 1967 (ADEA). In enacting that statute, Congress provided, *inter alia,* that the provisions of the ADEA were to be "enforced in accordance with the 'powers, remedies and procedures'" of specified sections of the Fair Labor Standards Act (FLSA), 81 Stat. 604, 29 U. S. C. § 626(b). *Lorillard,* 434 U. S., at 580. In the three decided cases which had treated the right to jury trial under the FLSA, each court had decided that there was such a right. In enacting the ADEA, "Congress exhibited both a detailed knowledge of the FLSA provisions and their judicial interpretation and a willingness to depart from those provisions regarded as undesirable or inappropriate for incorporation." *Id.,* at 581.

Here, by contrast, the Strauss and Brown Studies deal only briefly with the provision for the award of attorney's fees. In the Strauss Study, the limited discussion begins with a quote to A. Weil, American Copyright Law 530–531

(1917), for an explanation of the "discretionary awarding of attorney's fees":

> "'The amount of money frequently involved in copyright letigation *[sic]*, especially on the part of the defendant is trifling. The expense of any letigation *[sic]* is considerable. Unless, therefore, some provision is made for financial protection to a litigant, if successful, it may not pay a party to defend rights, even if valid, a situation opposed to justice . . . . It is increasingly recognized that the person who forces another to engage counsel to vindicate, or defend, a right should bear the expense of such engagement and not his successful opponent . . . .'" Strauss Study 31.

The study then notes that the pending bills contemplate no change in the attorney's fees provision and concludes with the simple statement "[t]he cases indicate that this discretion has been judiciously exercised by the courts." *Ibid.*[14] This limited discussion of attorney's fees surely does not constitute an endorsement of a dual standard.

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[14] In a footnote, the Strauss Study lists several cases exemplifying the courts' use of discretion. None of these cases explicitly require a dual standard of awarding attorney's fees, but instead offer various reasons for awarding or not awarding attorney's fees to the prevailing party. Cases cited by the study involving prevailing defendants: *Overman* v. *Loesser*, 205 F. 2d 521, 524 (CA9 1953) (denying counsel fees because there was "no indication that the appeal was pursued in bad faith" and "the principal question [was] a complex question of law"); *Official Aviation Guide Co.* v. *American Aviation Associates*, 162 F. 2d 541, 543 (CA7 1947) (denying attorney's fee where "[t]he instant case was hard fought and prosecuted in good faith, and . . . presented a complex problem in law"); *Rosen* v. *Lowe's Inc.*, 162 F. 2d 785 (CA2 1947) (defendant prevailed; no discussion of attorney's fees); *Advertisers Exchange, Inc.* v. *Anderson*, 144 F. 2d 907 (CA8 1944) (denying attorney's fee without comment in case involving defective copyright notice); *Lewys* v. *O'Neill*, 49 F. 2d 603, 618 (SDNY 1931) (awarding fees where plaintiff's case was "wholly synthetic"); *Metro Associated Services, Inc.* v. *Webster City Graphic, Inc.*, 117 F. Supp. 224 (ND Iowa 1953) (denying attorney's fee without explanation where plaintiff filed defective copyright); *Lowenfels* v. *Nathan*, 2 F. Supp. 73, 80 (SDNY 1932) (awarding fees where "[t]he most earnest advocate of the plaintiff's side . . . could not . . . possibly find" any plagiarism by the defendant);

The Brown Study was intended as a supplement to the Strauss Study and, *inter alia,* provides information from a survey distributed to practitioners about the practical work-

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Jerome v. *Twentieth Century-Fox Film Corp.*, 71 F. Supp. 914, 915 (SDNY 1946) (denying fee where court "[could] very well understand how plaintiff was driven to some litigation, although the theory of [the] action . . . was not supported by the proof"), 7 F. R. D. 190 (SDNY 1947), aff'd, 165 F. 2d 784 (CA2 1948).

Cases cited by the study involving prevailing plaintiffs: *Advertisers Exchange, Inc.* v. *Hinkley,* 199 F. 2d 313, 316 (CA8 1952) (denying an attorney's fee where plaintiff's counsel attempted to inflate and exaggerate plaintiff's claim), cert. denied, 344 U. S. 921 (1953); *Ziegelheim* v. *Flohr,* 119 F. Supp. 324, 329 (EDNY 1954) (court denied attorney's fee "since it appears to have . . . been a fairly common practice for publishers of [prayer books] to copy rather freely from each other, and since much of plaintiff's book was in the public domain, and defendant honestly, but mistakenly, believed that plaintiff was illegally attempting to copyright and monopolize the printing of ancient prayers"); *Edward B. Marks Music Corp.* v. *Borst Music Pub. Co.*, 110 F. Supp. 913 (NJ 1953) (court noted only that it would not award attorney's fee because such award is discretionary); *Stein* v. *Rosenthal,* 103 F. Supp. 227, 232 (SD Cal. 1952) (awarding attorney's fees of $3,500 as an amount "reasonably necessary to redress the infringement of plaintiffs' copyright"); *Northern Music Corp.* v. *King Record Distributing Co.*, 105 F. Supp. 393, 401 (SDNY 1952) (noting that prevailing plaintiff entitled to receive a reasonable attorney's fee to be assessed by the court); *White* v. *Kimmell,* 94 F. Supp. 502, 511 (SD Cal. 1950) (copyright holder, who was a successful defendant in a declaratory judgment action, was awarded costs but denied attorney's fee award without elaboration); *M. Witmark & Sons* v. *Pastime Amusement Co.*, 298 F. 470, 482–483 (EDSC 1924) (court awarded a moderate attorney's fee after noting that full allowance "would bear too heavily upon the defendant, in view of the character of the infringement and the circumstances surrounding it; but, if no fee should be allowed at all in such cases, it would probably result in many cases in a practical denial of the rights of copyright owners").

The study also cited to *Jewell-LaSalle Realty Co.* v. *Buck,* 283 U. S. 202 (1931), a case that did not involve attorney's fees, but instead addressed the damages provision of §25 of the 1909 Act, 35 Stat. 1081.

ings of the 1909 Copyright Act.[15] It also does not endorse a standard of treating prevailing plaintiffs and defendants differently. At one point, the study notes that "courts do not usually make an allowance at all if an unsuccessful plaintiff's claim was not 'synthetic, capricious or otherwise unreasonable,' or if the losing defendant raised real issues of fact or law." Brown Study 85.[16]

Our review of the prior case law itself leads us to conclude that there was no settled "dual standard" interpretation of former § 116 about which Congress could have been aware. We note initially that at least one reported case stated no reason in awarding attorney's fees to successful defendants. See, *e. g., Marks* v. *Leo Feist, Inc.*, 8 F. 2d 460, 461 (CA2 1925) (noting that the Copyright Act gave courts "absolute discretion," the court awarded attorney's fees to prevailing defendant after plaintiff voluntarily dismissed suit). More importantly, while it appears that the majority of lower courts exercised their discretion in awarding attorney's fees to prevailing defendants based on a finding of frivolousness or bad faith, not all courts expressly described the test in those terms.[17] In fact, only one pre-1976 case expressly endorsed a dual standard. *Breffort* v. *I Had a Ball Co.*, 271 F. Supp. 623 (SDNY 1967).[18] This is hardly the sort of uniform construction that Congress might have endorsed.

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[15] To this extent, the Brown Study focuses more on the effect that the prospect of an award of attorney's fees has on decisions to litigate or to settle cases. Based on its interview sources, the study concluded that the likelihood of getting a fee award is so problematic that "it is not a factor" that goes into the decision to settle or litigate. Brown Study 85. The report also noted that its observations about attorney's fees "are not intended as an exhaustive treatment of the subject" and that "[attorney's fees'] deterrent effect on ill-founded litigation, whether by plaintiffs or defendants, is outside the scope of this inquiry." *Id.*, at 85–86.

[16] Citing to *Cloth* v. *Hyman*, 146 F. Supp. 185, 193 (SDNY 1956) (it is proper to award fees to prevailing defendant when copyright action is brought in bad faith, with a motive to "vex and harass the defendant," or where plaintiff's claim utterly lacks merit). The Brown Study also included cites to *Eisenschiml* v. *Fawcett Publications, Inc.*, 246 F. 2d 598, 604 (CA7) (reversing attorney's fee award to prevailing defendant as an abuse of discretion where plaintiff's claim was not entirely without merit and involved a close question of law), cert. denied, 355 U. S. 907 (1957); *Marks* v. *Leo Feist, Inc.*, 8 F. 2d 460, 461 (CA2 1925) (awarding attorney's fees to prevailing defendant after plaintiff voluntarily dismissed suit).

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[17] See, *e. g., Shroeder* v. *William Morrow & Co.*, 421 F. Supp. 372, 378 (ND Ill. 1976) (refusing to award prevailing defendant an attorney's fee because plaintiff's action was "prosecuted in good faith and with a reasonable likelihood of success"), rev'd on other grounds, 566 F. 2d 3 (CA7 1977); *Kinelow Publishing Co.* v. *Photography In Business, Inc.*, 270 F. Supp. 851, 855 (SDNY 1967) (denying fee award to prevailing defendant because plaintiff's claims, while "lacking in merit," were not "unreasonable or capricious"); *Burnett* v. *Lambino*, 206 F. Supp. 517, 518–519 (SDNY 1962) (granting fee award to prevailing defendant where "asserted claim of infringement was so demonstrably lacking in merit that bringing it was clearly unreasonable"); *Cloth* v. *Hyman*, *supra*, at 193 (noting that it is proper to award fees when a copyright action is brought in bad faith, with a motive to "vex and harass the defendant," or where plaintiff's claim utterly lacks merit); *Loews, Inc.* v. *Columbia Broadcasting System, Inc.*, 131 F. Supp. 165, 186 (SD Cal. 1955) (denying prevailing defendant fee award where question presented in the case "was a nice one," and there are "no authorities squarely in point to guide the litigants or their counsel"), aff'd, 239 F. 2d 532 (CA9 1956), aff'd, 356 U. S. 43 (1958); *Krafft* v. *Cohen*, 38 F. Supp. 1022, 1023 (ED Pa. 1941) (denying fee award to prevailing defendant where claim brought "in good faith," and evidence demonstrated appropriation); *Lewys* v. *O'Neill*, 49 F. 2d, at 618 (awarding fees to prevailing defendant because plaintiff's case was "wholly synthetic").

[18] That court concluded that "the considerations prompting an award of fees to a successful plaintiff must of necessity differ from those determining whether a prevailing defendant is entitled to such an award." *Breffort*, 271 F. Supp., at 627. As support, the court stated: "The purpose of an award of counsel fees to a plaintiff is to deter copyright infringement. . . . In the case of a prevailing defendant, however, prevention of infringement is obviously not a factor; and if an award is to be made at all, it represents a penalty imposed upon the plaintiff for institution of a baseless, frivolous, or unreasonable suit, or one instituted in bad faith." *Ibid.* As we have already explained, *supra*, at 527, such is too narrow a view of the purposes of the Copyright Act because it fails to adequately consider the important role played by copyright defendants. See also

In summary, neither of the two studies presented to Congress, nor the cases referred to by the studies, support respondent's view that there was a settled construction in favor of the "dual standard" under § 116 of the 1909 Copyright Act.

We thus reject each of respondent's three arguments in support of the dual standard. We now turn to petitioner's argument that § 505 was intended to adopt the "British Rule." Petitioner argues that, consistent with the neutral language of § 505, both prevailing plaintiffs and defendants should be awarded attorney's fees as a matter of course, absent exceptional circumstances. For two reasons we reject this argument for the British Rule.

First, just as the plain language of § 505 supports petitioner's claim for disapproving the dual standard, it cuts against him in arguing for the British Rule. The statute says that "the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." The word "may" clearly connotes discretion. The automatic awarding of attorney's fees to the prevailing party would pretermit the exercise of that discretion.

Second, we are mindful that Congress legislates against the strong background of the American Rule. Unlike Britain where counsel fees are regularly awarded to the prevailing party, it is the general rule in this country that unless Congress provides otherwise, parties are to bear their own attorney's fees. *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247–262 (1975) (tracing the origins and development of the American Rule); *Flight Attendants* v. *Zipes*, 491 U. S., at 758. While § 505 is one situation in which

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Cohen v. *Virginia Electric & Power Co.*, 617 F. Supp., at 621–622 (tracing the evolution of the Second Circuit's dual standard rule and concluding that earlier cases upon which it supposedly rests do not *require* bad faith or frivolousness—"[the dual standard rule] is the culmination of a long line of bootstrapping from nothing to something").

Congress has modified the American Rule to allow an award of attorney's fees in the court's discretion, we find it impossible to believe that Congress, without more, intended to adopt the British Rule. Such a bold departure from traditional practice would have surely drawn more explicit statutory language and legislative comment. Cf. *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779, 783 (1952) ("Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident"). Not surprisingly, no court has held that § 505 (or its predecessor statute) adopted the British Rule.

Thus we reject both the "dual standard" adopted by several of the Courts of Appeals and petitioner's claim that § 505 enacted the British Rule for automatic recovery of attorney's fees by the prevailing party. Prevailing plaintiffs and prevailing defendants are to be treated alike, but attorney's fees are to be awarded to prevailing parties only as a matter of the court's discretion. "There is no precise rule or formula for making these determinations," but instead equitable discretion should be exercised "in light of the considerations we have identified." *Hensley* v. *Eckerhart*, 461 U. S. 424, 436–437 (1983).[19] Because the Court of Appeals erroneously held petitioner, the prevailing defendant, to a more stringent standard than that applicable to a prevailing plaintiff, its judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

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[19] Some courts following the evenhanded standard have suggested several nonexclusive factors to guide courts' discretion. For example, the Third Circuit has listed several nonexclusive factors that courts should consider in making awards of attorney's fees to any prevailing party. These factors include "frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Lieb* v. *Topstone Industries, Inc.*, 788 F. 2d 151, 156 (1986). We agree that such factors may be used to guide courts' discretion, so long as such factors are faithful to the purposes of the Copyright Act and are applied to prevailing plaintiffs and defendants in an evenhanded manner.

It is so ordered.

JUSTICE THOMAS, concurring in the judgment.

In my view, the Court's opinion is flatly inconsistent with our statutory analysis in *Christiansburg Garment Co.* v. *EEOC*, 434 U. S. 412 (1978). Because I disagree with that analysis, however, and because I believe the Court adopts the correct interpretation of the statutory language at issue in this case, I concur in the judgment.

In *Christiansburg*, the Court interpreted the attorney's fee provision of Title VII of the Civil Rights Act of 1964, which states that "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee . . . as part of the costs . . . ." 42 U. S. C. § 2000e–5(k) (1988 ed., Supp. III). In this case, the Court construes the attorney's fee provision of the Copyright Act of 1976, which states that "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U. S. C. § 505. As the Court observes, the two provisions contain "virtually identical language." *Ante*, at 522. After today's decision, however, they will have vastly different meanings.

Under the Title VII provision, a prevailing plaintiff "ordinarily is to be awarded attorney's fees in all but special circumstances," *Christiansburg*, 434 U. S., at 417, whereas a prevailing defendant is to be awarded fees only "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation," *id.*, at 421. By contrast, under the Court's decision today, prevailing plaintiffs and defendants in the copyright context "are to be treated alike," and "attorney's fees are to be awarded to prevailing parties only as a matter of the court's discretion." *Ante*, at 534.

Interestingly, the Court does not mention, let alone discuss, *Christiansburg*'s statutory analysis. We began that analysis by considering the *Christiansburg* petitioner's argument:

> "Relying on what it terms 'the plain meaning of the statute,' [petitioner] argues that the language of [the attorney's fee provision] admits of only one interpretation: 'A prevailing defendant is entitled to an award of attorney's fees on the same basis as a prevailing plaintiff.'" 434 U. S., at 418.

We summarily rejected this contention, stating that "the permissive and discretionary language of the statute does not even invite, let alone require, such a mechanical construction." *Ibid.* We opined that the language "provide[s] no indication whatever of the circumstances under which either a plaintiff or a defendant should be entitled to attorney's fees." *Ibid.* (emphasis deleted). Turning to the "equitable considerations" embodied in the statute's policy objectives and legislative history, *id.*, at 418–420, we stated that those considerations counseled against petitioner's position—a position we concluded was "untenable," *id.*, at 419.

Today, confronting a provision "virtually identical" to that at issue in *Christiansburg,* the Court adopts precisely the interpretation that *Christiansburg* rejected as "mechanical" and "untenable." The Court states that "the plain language of § 505 supports petitioner's claim for disapproving the dual standard," *ante,* at 533, and that the language "gives no hint that successful plaintiffs are to be treated differently from successful defendants," *ante,* at 522. Thus, the Court replaces the "dual" standard adopted by the Ninth Circuit with an "evenhanded" approach, under which district courts will apply the same standard to prevailing plaintiffs and defendants when deciding whether to award fees. *Ante,* at 534–535, and n. 19.

It is difficult to see how the Court, when faced with "virtually identical" language in two provisions, can hold that a given interpretation is required by the "plain language" in one instance, but reject that same interpretation as "mechanical" and "untenable" in the other. After today's decision, Congress could employ the same terminology in two different attorney's fee statutes, but be quite uncertain as to whether the Court would adopt a "dual" standard (that is, reject the "mechanical" construction) or apply an "evenhanded" rule (that is, adopt the "plain meaning").

Such an inconsistent approach to statutory interpretation robs the law of "the clarity of its command and the certainty of its application." *Doggett* v. *United States*, 505 U. S. 647, 669 (1992) (THOMAS, J., dissenting). Indeed, we repeatedly have sought to avoid this sort of inconsistency in our fee award decisions. See, *e. g., Burlington* v. *Dague*, 505 U. S. 557, 562 (1992) ("case law construing what is a 'reasonable' fee applies uniformly to all" fee-shifting statutes using the term); *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680, 691 (1983) ("similar attorney's fee provisions should be interpreted *pari passu*"); *Hensley* v. *Eckerhart*, 461 U. S. 424, 433, n. 7 (1983) (the standards "set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party'"). See also *Flight Attendants* v. *Zipes*, 491 U. S. 754, 758, n. 2 (1989) ("fee-shifting statutes' similar language is 'a strong indication' that they are to be interpreted alike"); *Northcross* v. *Board of Ed. of Memphis City Schools*, 412 U. S. 427, 428 (1973) *(per curiam)* ("[S]imilarity of language . . . is, of course, a strong indication that . . . two [attorney's fee] statutes should be interpreted *pari passu*").

The Court recognizes the general principle that similar fee provisions are to be interpreted alike, *ante*, at 523, but states that the principle does not govern this case because the factors that guided our interpretation in *Christiansburg*—the policy objectives and legislative history of the statute—do not support the adoption of a "dual" standard in this context. See *ante*, at 522–525. The Court's analysis, however, rests on the mistaken premise—a premise implicit in *Christians-*

burg—that whether we construe a statute in accordance with its plain meaning depends upon the statute's policy objectives and legislative history. Although attorney's fee provisions may be interpreted "in light of the competing equities that Congress normally takes into account," *Zipes, supra,* at 761, those "equities" cannot dictate a result that is contrary to the statutory language. "Our task is to apply the text, not to improve upon it." *Pavelic & LeFlore* v. *Marvel Entertainment Group, Div. of Cadence Industries Corp.,* 493 U. S. 120, 126 (1989). When the text of the statute is clear, our interpretive inquiry ends. See *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 254 (1992). The Court goes astray, in my view, by attempting to reconcile this case with *Christiansburg.* Rather, it should acknowledge that *Christiansburg* mistakenly cast aside the statutory language to give effect to equitable considerations.

I concur in the judgment, however, because I believe the Court adopts the correct interpretation of the statutory language in this case. As the Court observes, the language of 17 U. S. C. § 505 gives no indication that prevailing plaintiffs and defendants are to be treated differently. See *ante,* at 522, 533. In addition, as the Court states, the use of the word "may" suggests that the determination of whether an attorney's fee award is appropriate is to be left to the discretion of the district courts. *Ante,* at 533. This conclusion finds further support in the full text of § 505, which provides that "the court *in its discretion may allow* the recovery of full costs . . . . [T]he court *may also award* a reasonable attorney's fee to the prevailing party as part of the costs." (Emphasis added.)

Because considerations of *stare decisis* have "special force" in the area of statutory interpretation, *Patterson* v. *McLean Credit Union,* 491 U. S. 164, 172 (1989), I might be hesitant to overrule *Christiansburg* and other cases in which we have construed similar attorney's fee provisions to impose a "dual" standard of recovery. See, *e. g., Hensley, supra,* at

429, and n. 2 (42 U. S. C. § 1988 (1988 ed., Supp. III)); *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 483 U. S. 711, 713, n. 1 (1987) (42 U. S. C. § 7604(d)). But while *stare decisis* may call for hesitation in overruling a dubious precedent, "it does not demand that such a precedent be expanded to its outer limits." *Helling* v. *McKinney*, 509 U. S. 25, 42 (1993) (THOMAS, J., dissenting). I would therefore decline to extend *Christiansburg*'s analysis to other contexts. Because the Court—at least in result, if not in rationale—refuses to make such an extension, I concur in the judgment.

LITEKY ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92–6921. Argued November 3, 1993—Decided March 7, 1994

Before and during petitioners' 1991 trial on federal criminal charges, the District Judge denied defense motions that he recuse himself pursuant to 28 U. S. C. § 455(a), which requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The first motion was based on rulings and statements this same judge made, which allegedly displayed impatience, disregard, and animosity toward the defense, during and after petitioner Bourgeois' 1983 bench trial on similar charges. The second motion was founded on the judge's admonishment of Bourgeois' counsel and codefendants in front of the jury at the 1991 trial. In affirming petitioners' convictions, the Court of Appeals agreed with the District Judge that matters arising from judicial proceedings are not a proper basis for recusal.

Held: Required recusal under § 455(a) is subject to the limitation that has come to be known as the "extrajudicial source" doctrine. Pp. 543–556.

(a) The doctrine—see *United States* v. *Grinnell Corp.*, 384 U. S. 563, 583—applies to § 455(a). It was developed under § 144, which requires disqualification for "personal bias or prejudice." That phrase is repeated as a recusal ground in § 455(b)(1), and § 455(a), addressing disqualification for appearance of partiality, also covers "bias or prejudice." The absence of the word "personal" in § 455(a) does not preclude the doctrine's application, since the textual basis for the doctrine is the pejorative connotation of the words "bias or prejudice," which indicate a judicial predisposition that is *wrongful* or *inappropriate.* Similarly, because the term "partiality" refers only to such favoritism as is, for some reason, wrongful or inappropriate, § 455(a)'s requirement of recusal *whenever* there exists a genuine question concerning a judge's impartiality does not preclude the doctrine's application. A contrary finding would cause the statute, in a significant sense, to contradict itself, since (petitioners acknowledge) § 455(b)(1) embodies the doctrine, and § 455(a) duplicates § 455(b)'s protection with regard to "bias and prejudice." Pp. 543–553.

(b) However, it is better to speak of the existence of an "extrajudicial source" *factor,* than of a *doctrine,* because the presence of such a source does not necessarily establish bias, and its absence does not necessarily preclude bias. The consequences of that factor are twofold for purposes of this case. First, judicial rulings alone almost never constitute valid basis for a bias or partiality recusal motion. See *Grinnell, supra,* at 583. Apart from surrounding comments or accompanying opinion, they cannot possibly show reliance on an extrajudicial source; and, absent such reliance, they require recusal only when they evidence such deep-seated favoritism or antagonism as would make fair judgment impossible. Second, opinions formed by the judge on the basis of facts introduced or events occurring during current or prior proceedings are not grounds for a recusal motion unless they display a similar degree of favoritism or antagonism. Pp. 554–556.

(c) Application of the foregoing principles to the facts of this case demonstrates that none of the grounds petitioners assert required disqualification. They all consist of judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses. All occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible. P. 556.

973 F. 2d 910, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, THOMAS, and GINSBURG, JJ., joined. KENNEDY, J., filed an opinion concurring in the judgment, in which BLACKMUN, STEVENS, and SOUTER, JJ., joined, *post,* p. 557.

Peter Thompson, by appointment of the Court, 509 U. S. 920, argued the cause and filed briefs for petitioners.

Thomas G. Hungar argued the cause for the United States. With him on the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Bryson,* and *Joel M. Gershowitz.*

JUSTICE SCALIA delivered the opinion of the Court.

Section 455(a) of Title 28 of the United States Code requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." This case presents the question whether required recusal under this provision is subject to the limitation that has come to be known as the "extrajudicial source" doctrine.

I

In the 1991 trial at issue here, petitioners were charged with willful destruction of property of the United States in violation of 18 U. S. C. § 1361. The indictment alleged that they had committed acts of vandalism, including the spilling of human blood on walls and various objects, at the Fort Benning Military Reservation. Before trial petitioners moved to disqualify the District Judge pursuant to 28 U. S. C. § 455(a). The motion relied on events that had occurred during and immediately after an earlier trial, involving petitioner Bourgeois, before the same District Judge.

In the 1983 bench trial, Bourgeois, a Catholic priest of the Maryknoll order, had been tried and convicted of various misdemeanors committed during a protest action, also on the federal enclave of Fort Benning. Petitioners claimed that recusal was required in the present case because the judge had displayed "impatience, disregard for the defense and animosity" toward Bourgeois, Bourgeois' codefendants, and their beliefs. The alleged evidence of that included the following words and acts by the judge: stating at the outset of the trial that its purpose was to try a criminal case and not to provide a political forum; observing after Bourgeois' opening statement (which described the purpose of his protest) that the statement ought to have been directed toward the anticipated evidentiary showing; limiting defense counsel's cross-examination; questioning witnesses; periodically cautioning defense counsel to confine his questions to issues material to trial; similarly admonishing witnesses to keep answers responsive to actual questions directed to material issues; admonishing Bourgeois that closing argument was not a time for "making a speech" in a "political forum"; and giving Bourgeois what petitioners considered to be an excessive sentence. The final asserted ground for disqualification—and the one that counsel for petitioners described at oral argument as the most serious—was the judge's interruption of the closing argument of one of Bourgeois' codefendants, instructing him to cease the introduction of new facts, and to restrict himself to discussion of evidence already presented.

The District Judge denied petitioners' disqualification motion, stating that matters arising from judicial proceedings were not a proper basis for recusal. At the outset of the trial, Bourgeois' counsel informed the judge that he intended to focus his defense on the political motivation for petitioners' actions, which was to protest United States Government involvement in El Salvador. The judge said that he would allow petitioners to state their political purposes in opening argument and to testify about them as well, but that he would not allow long speeches or discussions concerning Government policy. When, in the course of opening argument, Bourgeois' counsel began to explain the circumstances surrounding certain events in El Salvador, the prosecutor objected, and the judge stated that he would not allow discussion about events in El Salvador. He then instructed defense counsel to limit his remarks to what he expected the evidence to show. At the close of the prosecution's case, Bourgeois renewed his disqualification motion, adding as grounds for it the District Judge's "admonishing [him] in front of the jury" regarding the opening statement, and the District Judge's unspecified "admonishing [of] others," in particular Bourgeois' two *pro se* codefendants. The motion was again denied. Petitioners were convicted of the offense charged.

Petitioners appealed, claiming that the District Judge violated 28 U. S. C. § 455(a) in refusing to recuse himself. The Eleventh Circuit affirmed the convictions, agreeing with the District Court that "matters arising out of the course of judicial proceedings are not a proper basis for recusal." 973 F. 2d 910 (1992). We granted certiorari. 508 U. S. 939 (1993).

II

Required judicial recusal for bias did not exist in England at the time of Blackstone. 3 W. Blackstone, Commentaries

*361. Since 1792, federal statutes have compelled district judges to recuse themselves when they have an interest in the suit, or have been counsel to a party. See Act of May 8, 1792, ch. 36, § 11, 1 Stat. 278. In 1821, the basis of recusal was expanded to include all judicial relationship or connection with a party that would in the judge's opinion make it improper to sit. Act of Mar. 3, 1821, ch. 51, 3 Stat. 643. Not until 1911, however, was a provision enacted requiring district-judge recusal for bias *in general.* In its current form, codified at 28 U. S. C. § 144, that provision reads as follows:

> "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> "The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

Under § 144 and its predecessor, there came to be generally applied in the courts of appeals a doctrine, more standard in its formulation than clear in its application, requiring—to take its classic formulation found in an oft-cited opinion by Justice Douglas for this Court—that "[t]he alleged bias and prejudice to be disqualifying [under § 144] must stem from an extrajudicial source." *United States* v. *Grinnell Corp.,* 384 U. S. 563, 583 (1966). We say that the doctrine was less than entirely clear in its application for several reasons. First, *Grinnell* (the only opinion of ours to recite the doctrine) clearly meant by "extrajudicial source" a source outside the judicial proceeding at hand—which would include as extrajudicial sources earlier judicial proceedings conducted by the same judge (as are at issue here).[1] Yet many, perhaps most, Courts of Appeals considered knowledge (and the resulting attitudes) that a judge properly acquired in an earlier proceeding *not* to be "extrajudicial." See, *e. g., Lyons* v. *United States,* 325 F. 2d 370, 376 (CA9), cert. denied, 377 U. S. 969 (1964); *Craven* v. *United States,* 22 F. 2d 605, 607–608 (CA1 1927). Secondly, the doctrine was often quoted as justifying the refusal to consider trial *rulings* as the basis for § 144 recusal. See, *e. g., Toth* v. *Trans World Airlines, Inc.,* 862 F. 2d 1381, 1387–1388 (CA9 1988); *Liberty Lobby, Inc.* v. *Dow Jones & Co.,* 838 F. 2d 1287, 1301 (CADC), cert. denied, 488 U. S. 825 (1988). But trial *rulings* have a judicial *expression* rather than a judicial *source.* They may well be based upon extrajudicial knowledge or motives. Cf. *In re International Business Machines Corp.,* 618 F. 2d 923, 928, n. 6 (CA2 1980). And finally, even in cases in which the "source" of the bias or prejudice was clearly the proceedings themselves (for example, testimony introduced or an event occurring at trial which produced unsuppressible judicial animosity), the supposed doctrine would not necessarily be applied. See, *e. g., Davis* v. *Board of School Comm'rs of Mobile County,* 517 F. 2d 1044, 1051 (CA5 1975) (doctrine has "pervasive bias" exception), cert. denied, 425 U. S. 944 (1976);

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[1] That is clear when the language from *Grinnell* excerpted above is expanded to include its entire context: "The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *Berger* v. *United States,* 255 U. S. 22, 31. Any adverse attitudes that [the district judge in the present case] evinced toward the defendants were based on his study of the depositions and briefs which the parties had requested him to make." 384 U. S., at 583. The cited case, *Berger,* had found recusal required on the basis of judicial remarks made in an earlier proceeding.

Rice v. *McKenzie,* 581 F. 2d 1114, 1118 (CA4 1978) (doctrine "has always had limitations").

Whatever the precise contours of the "extrajudicial source" doctrine (a subject to which we will revert shortly), it is the contention of petitioners that the doctrine has no application to §455(a). Most Courts of Appeals to consider the matter have rejected this contention, see *United States* v. *Barry,* 961 F. 2d 260, 263 (CADC 1992); *United States* v. *Sammons,* 918 F. 2d 592, 599 (CA6 1990); *McWhorter* v. *Birmingham,* 906 F. 2d 674, 678 (CA11 1990); *United States* v. *Mitchell,* 886 F. 2d 667, 671 (CA4 1989); *United States* v. *Merkt,* 794 F. 2d 950, 960 (CA5 1986), cert. denied, 480 U. S. 946 (1987); *Johnson* v. *Trueblood,* 629 F. 2d 287, 290–291 (CA3 1980), cert. denied, 450 U. S. 999 (1981); *United States* v. *Sibla,* 624 F. 2d 864, 869 (CA9 1980). Some, however, have agreed with it, see *United States* v. *Chantal,* 902 F. 2d 1018, 1023–1024 (CA1 1990); cf. *United States* v. *Coven,* 662 F. 2d 162, 168–169 (CA2 1981) (semble), cert. denied, 456 U. S. 916 (1982). To understand the arguments pro and con it is necessary to appreciate the major changes in prior law effected by the revision of §455 in 1974.

Before 1974, §455 was nothing more than the then-current version of the 1821 prohibition against a judge's presiding who has an interest in the case or a relationship to a party. It read, quite simply:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." 28 U. S. C. §455 (1970 ed.).

The 1974 revision made massive changes, so that §455 now reads as follows:

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

"(b) He shall also disqualify himself in the following circumstances:

"(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

"(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

"(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

"(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

"(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

"(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

"(ii) Is acting as a lawyer in the proceeding;

"(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

"(iv) Is to the judge's knowledge likely to be a material witness in the proceeding."

Almost all of the revision (paragraphs (b)(2) through (b)(5)) merely rendered objective and spelled out in detail the "interest" and "relationship" grounds of recusal that had previously been covered by § 455. But the other two paragraphs of the revision brought into § 455 elements of general "bias and prejudice" recusal that had previously been addressed only by § 144. Specifically, paragraph (b)(1) entirely duplicated the grounds of recusal set forth in § 144 ("bias or prejudice"), but (1) made them applicable to *all* justices, judges, and magistrates (and not just district judges), and (2) placed the obligation to identify the existence of those grounds upon the judge himself, rather than requiring recusal only in response to a party affidavit.

Subsection (a), the provision at issue here, was an entirely new "catchall" recusal provision, covering both "interest or relationship" and "bias or prejudice" grounds, see *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847 (1988)—but requiring them *all* to be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever "impartiality might reasonably be questioned."

What effect these changes had upon the "extrajudicial source" doctrine—whether they in effect render it obsolete, of continuing relevance only to § 144, which seems to be properly invocable only when § 455(a) can be invoked anyway—depends upon what the basis for that doctrine was. Petitioners suggest that it consisted of the limitation of § 144 to "*personal* bias or prejudice," bias or prejudice officially acquired being different from "personal" bias or prejudice. And, petitioners point out, while § 455(b)(1) retains the phrase "personal bias or prejudice," § 455(a) proscribes all partiality, not merely the "personal" sort.

It is true that a number of Courts of Appeals have relied upon the word "personal" in restricting § 144 to extrajudicial sources, see, *e. g.*, *Craven* v. *United States*, 22 F. 2d 605, 607–

608 (CA1 1927); *Ferrari* v. *United States,* 169 F. 2d 353, 355 (CA9 1948). And several cases have cited the absence of that word as a reason for excluding that restriction from § 455(a), see *United States* v. *Coven, supra,* at 168, cert. denied, 456 U. S. 916 (1982); *Panzardi-Alvarez* v. *United States,* 879 F. 2d 975, 983–984, and n. 6 (CA1), cert. denied, 493 U. S. 1082 (1989). It seems to us, however, that that mistakes the basis for the "extrajudicial source" doctrine. Petitioners' suggestion that we relied upon the word "personal" in our *Grinnell* opinion is simply in error. The only reason *Grinnell* gave for its "extrajudicial source" holding was citation of our opinion almost half a century earlier in *Berger* v. *United States,* 255 U. S. 22 (1921). But that case, and the case which it in turn cited, *Ex parte American Steel Barrel Co.,* 230 U. S. 35 (1913), relied not upon the word "personal" in § 144, but upon its provision requiring the recusal affidavit to be filed 10 days before the beginning of the court term. That requirement was the reason we found it obvious in *Berger* that the affidavit "must be based upon facts antedating the trial, not those occurring during the trial," 255 U. S., at 34; and the reason we said in *American Steel Barrel* that the recusal statute "was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, . . . but to prevent his future action in the pending cause," 230 U. S., at 44.

In our view, the proper (though unexpressed) rationale for *Grinnell,* and the basis of the modern "extrajudicial source" doctrine, is not the statutory term "personal"—for several reasons. First and foremost, that explanation is simply not the semantic success it pretends to be. Bias and prejudice seem to us not divided into the "personal" kind, which is offensive, and the official kind, which is perfectly all right. As generally used, these are pejorative terms, describing dispositions that are *never* appropriate. It is common to speak of "personal bias" or "personal prejudice" without meaning the adjective to do anything except emphasize the idiosyncratic nature of bias and prejudice, and certainly without implying that there is some other "nonpersonal," benign category of those mental states. In a similar vein, one speaks of an individual's "personal preference," without implying that he could also have a "nonpersonal preference." Secondly, interpreting the term "personal" to create a complete dichotomy between court-acquired and extrinsically acquired bias produces results so intolerable as to be absurd. Imagine, for example, a lengthy trial in which the presiding judge for the first time learns of an obscure religious sect, and acquires a passionate hatred for all its adherents. This would be "official" rather than "personal" bias, and would provide no basis for the judge's recusing himself.

It seems to us that the origin of the "extrajudicial source" doctrine, and the key to understanding its flexible scope (or the so-called "exceptions" to it), is simply the pejorative connotation of the words "bias or prejudice." Not *all* unfavorable disposition towards an individual (or his case) is properly described by those terms. One would not say, for example, that world opinion is biased or prejudiced against Adolf Hitler. The words connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate,* either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess (for example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendant's prior criminal activities), or because it is excessive in degree (for example, a criminal juror who is so inflamed by properly admitted evidence of a defendant's prior criminal activities that he will vote guilty regardless of the facts). The "extrajudicial source" doctrine is one application of this pejorativeness requirement to the terms "bias" and "prejudice" as they are used in §§144 and 455(b)(1) with specific reference to the work of judges.

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that "extrajudicial source" is the *only* basis for establishing disqualifying bias or prejudice. It is the only *common* basis, but not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (That explains what some courts have called the "pervasive bias" exception to the "extrajudicial source" doctrine. See, *e. g.*, *Davis* v. *Board of School Comm'rs of Mobile County*, 517 F. 2d 1044, 1051 (CA5 1975), cert. denied, 425 U. S. 944 (1976).)

With this understanding of the "extrajudicial source" limitation in §§144 and 455(b)(1), we turn to the question whether it appears in §455(a) as well. Petitioners' argument for the negative based upon the mere absence of the word "personal" is, for the reasons described above, not persuasive. Petitioners also rely upon the categorical nature of § 455's language: Recusal is required *whenever* there exists a genuine question concerning a judge's impartiality, and not merely when the question arises from an extrajudicial source. A similar "plain-language" argument could be made, however, with regard to §§ 144 and 455(b)(1): They apply *whenever* bias or prejudice exists, and not merely when it derives from an extrajudicial source. As we have described, the latter argument is invalid because the pejorative connotation of the terms "bias" and "prejudice" demands that they be applied only to judicial predispositions that go beyond what is normal and acceptable. We think there is an equivalent pejorative connotation, with equivalent consequences, to the term "partiality." See American Heritage Dictionary 1319 (3d ed. 1992) ("partiality" defined as "[f]avorable prejudice or bias"). A prospective juror in an insurance-claim case may be stricken as partial if he always votes for insurance companies; but not if he always votes for the party whom the terms of the contract support. "Partiality" does not refer to all favoritism, but only to such as is, for some reason, wrongful or inappropriate. Impartiality is not gullibility. Moreover, even if the pejorative connotation of "partiality" were not enough to import the "extrajudicial source" doctrine into § 455(a), the "reasonableness" limitation (recusal is required only if the judge's impartiality "might *reasonably* be questioned") would have the same effect. To demand the sort of "child-like innocence" that elimination of the "extrajudicial source" limitation would require is not reasonable.

Declining to find in the language of § 455(a) a limitation which (petitioners acknowledge) *is* contained in the language of § 455(b)(1) would cause the statute, in a significant sense, to contradict itself. As we have described, § 455(a) expands the protection of § 455(b), but duplicates some of its protection as well—not only with regard to bias and prejudice but also with regard to interest and relationship. Within the area of overlap, it is unreasonable to interpret § 455(a) (unless the language *requires* it) as implicitly eliminating a limitation explicitly set forth in § 455(b). It would obviously be wrong, for example, to hold that "impartiality could reasonably be questioned" simply because one of the parties is in the fourth degree of relationship to the judge. Section 455(b)(5), which addresses the matter of relationship specifically, ends the disability at the *third* degree of relationship, and that should obviously govern for purposes of § 455(a) as well. Similarly, § 455(b)(1), which addresses the matter of personal bias and prejudice specifically, contains the "extrajudicial source" limitation—and *that* limitation (since nothing in the text contradicts it) should govern for purposes of § 455(a) as well.[2]

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[2] JUSTICE KENNEDY asserts that what we have said in this paragraph contradicts the proposition, established in *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847 (1988), that "subsections (a) and (b), while addressing many of the same underlying circumstances, are autonomous in operation." *Post*, at 566. *Liljeberg* established no such thing. It established that subsection (a) requires recusal in some circumstances where subsection (b) does not—but that is something quite different from "autonomy," which in the context in which JUSTICE KENNEDY uses it means that the one subsection is to be interpreted and applied without reference to the other.

It is correct that subsection (a) has a "broader reach" than subsection (b), *post*, at 567, but the provisions obviously have some ground in common as well, and should not be applied inconsistently there. *Liljeberg* concerned a respect in which subsection (a) *did* go beyond (b). Since subsection (a) deals with the *objective appearance* of partiality, any limitations contained in (b) that consist of a subjective-knowledge requirement are obviously inapplicable. Subsection (a) also goes beyond (b) in another important respect: It covers *all* aspects of partiality, and not merely those specifically addressed in subsection (b). However, when one of those aspects addressed in (b) *is* at issue, it is poor statutory construction to interpret (a) as nullifying the limitations (b) provides, except to the extent the text requires. Thus, as we have said, under subsection (a) as under (b)(5), fourth degree of kinship will not do.

What is at issue in the present case *is* an aspect of "partiality" already addressed in (b), personal bias or prejudice. The "objective appearance" principle of subsection (a) makes irrelevant the subjective limitation of

Petitioners suggest that applying the "extrajudicial source" limitation to § 455(a) will cause disqualification of a trial judge to be more easily obtainable upon remand of a case by an appellate court than upon direct motion. We do not see why that necessarily follows; and if it does, why it is necessarily bad. Federal appellate courts' ability to assign a case to a different judge on remand rests not on the recusal statutes alone, but on the appellate courts' statutory power to "require such further proceedings to be had as may be just under the circumstances," 28 U. S. C. § 2106. That may permit a different standard, and there may be pragmatic reasons for a different standard. We do not say so—but merely say that the standards applied on remand are irrelevant to the question before us here.

For all these reasons, we think that the "extrajudicial source" doctrine, as we have described it, applies to § 455(a). As we have described it, however, there is not much doctrine to the doctrine. The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a *necessary* condition for "bias or prejudice" recusal, since predispositions developed during the course of a trial will sometimes (albeit rarely) suffice. Nor is it a *sufficient* condition for "bias or prejudice" recusal, since *some* opinions acquired outside the context of judicial proceedings (for example, the judge's view of the law acquired in scholarly reading) will *not* suffice. Since neither the presence of an extrajudicial source necessarily establishes bias, nor the absence of an extrajudicial source necessarily precludes bias, it would be

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(b)(1): The judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so. But nothing in subsection (a) eliminates the longstanding limitation of (b)(1), that "personal bias or prejudice" does not consist of a disposition that fails to satisfy the "extrajudicial source" doctrine. The objective appearance of an adverse disposition attributable to information acquired in a prior trial is not an objective appearance of personal bias or prejudice, and hence not an objective appearance of improper partiality.

better to speak of the existence of a significant (and often determinative) "extrajudicial source" *factor*, than of an "extrajudicial source" *doctrine*, in recusal jurisprudence.

The facts of the present case do not require us to describe the consequences of that factor in complete detail. It is enough for present purposes to say the following: First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. See *United States* v. *Grinnell Corp.*, 384 U. S., at 583. In and of themselves (*i. e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. An example of the latter (and perhaps of the former as well) is the statement that was alleged to have been made by the District Judge in *Berger* v. *United States*, 255 U. S. 22 (1921), a World War I espionage case against German-American defendants: "One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans" because their "hearts are reeking with disloyalty." *Id.*, at 28 (internal quotation marks omitted). *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.

III

Applying the principles we have discussed to the facts of the present case is not difficult. None of the grounds petitioners assert required disqualification. As we have described, petitioners' first recusal motion was based on rulings made, and statements uttered, by the District Judge during and after the 1983 trial; and petitioner Bourgeois' second recusal motion was founded on the judge's admonishment of Bourgeois' counsel and codefendants. In their briefs here, petitioners have referred to additional manifestations of alleged bias in the District Judge's conduct of the trial below, including the questions he put to certain witnesses, his alleged "anti-defendant tone," his cutting off of testimony said to be relevant to defendants' state of mind, and his post-trial refusal to allow petitioners to appeal *in forma pauperis.*[3]

All of these grounds are inadequate under the principles we have described above: They consist of judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses. All occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible.

The judgment of the Court of Appeals is

Affirmed.

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[3] Petitioners' brief also complains of the District Judge's refusal in the 1983 trial to call petitioner Bourgeois "Father," asserting that this "subtly manifested animosity toward Father Bourgeois." Brief for Petitioners 30. As we have discussed, when intrajudicial behavior is at issue, manifestations of animosity must be much more than subtle to establish bias.

JUSTICE KENNEDY, with whom JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE SOUTER join, concurring in the judgment.

The Court's ultimate holding that petitioners did not assert sufficient grounds to disqualify the District Judge is unexceptionable. Nevertheless, I confine my concurrence to the judgment, for the Court's opinion announces a mistaken, unfortunate precedent in two respects. First, it accords nearly dispositive weight to the source of a judge's alleged partiality, to the point of stating that disqualification for intrajudicial partiality is not required unless it would make a fair hearing impossible. Second, the Court weakens the principal disqualification statute in the federal system, 28 U. S. C. § 455, by holding—contrary to our most recent interpretation of the statute in *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847 (1988)—that the broad protections afforded by subsection (a) are qualified by limitations explicit in the specific prohibitions of subsection (b).

I

We took this case to decide whether the reach of § 455(a) is limited by the so-called extrajudicial source rule. I agree with the Court insofar as it recognizes that there is no *per se* rule requiring that the alleged partiality arise from an extrajudicial source. In my view, however, the Court places undue emphasis upon the source of the challenged mindset in determining whether disqualification is mandated by § 455(a).

A

Section 455(a) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." For present purposes, it should suffice to say that § 455(a) is triggered by an attitude or state of mind so resistant to fair and dispassionate inquiry as to cause a party, the public, or a reviewing court to have reasonable grounds to question the neutral and objective character of a judge's rulings or findings. I think all would agree that a high threshold is required to satisfy this standard. Thus, under § 455(a), a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute.

The statute does not refer to the source of the disqualifying partiality. And placing too much emphasis upon whether the source is extrajudicial or intrajudicial distracts from the central inquiry. One of the very objects of law is the impartiality of its judges in fact and appearance. So in one sense it could be said that any disqualifying state of mind must originate from a source outside law itself. That metaphysical inquiry, however, is beside the point. The relevant consideration under § 455(a) is the appearance of partiality, see *Liljeberg, supra,* at 860, not where it originated or how it was disclosed. If, for instance, a judge presiding over a retrial should state, based upon facts adduced and opinions formed during the original cause, an intent to ensure that one side or the other shall prevail, there can be little doubt that he or she must recuse. Cf. *Rugenstein* v. *Ottenheimer,* 78 Ore. 371, 372, 152 P. 215, 216 (1915) (reversing for judge's failure to disqualify himself on retrial, where judge had stated: " 'This case may be tried again, and it will be tried before me. I will see to that. And I will see that the woman gets another verdict and judgment that will stand' ").

I agree, then, with the Court's rejection of the *per se* rule applied by the Court of Appeals, which provides that "matters arising out of the course of judicial proceedings are not a proper basis for recusal" under § 455(a). 973 F. 2d 910 (CA11 1992). But the Court proceeds to discern in the statute an extrajudicial source interpretive doctrine, under which the source of an alleged deep-seated predisposition is a primary factor in the analysis. The Court's candid struggle to find a persuasive rationale for this approach demonstrates that prior attempts along those lines have fallen somewhat short of the mark. This, I submit, is due to the fact that the doctrine crept into the jurisprudence more by accident than design.

The term "extrajudicial source," though not the interpretive doctrine bearing its name, has appeared in only one of our previous cases: *United States* v. *Grinnell Corp.*, 384 U. S. 563 (1966). Respondents in *Grinnell* alleged that the trial judge had a personal bias against them, and sought his disqualification and a new trial under 28 U. S. C. § 144. That statute, like § 455(b)(1), requires disqualification for "bias or prejudice." In denying respondents' claim, the Court stated that "[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." 384 U. S., at 583.

Although *Grinnell's* articulation of the extrajudicial source rule has a categorical aspect about it, the decision, on closer examination, proves not to erect a *per se* barrier. After reciting what appeared to be an absolute rule, the Court proceeded to make a few additional points: that certain in-court statements by the judge "reflected no more than his view that, if the facts were as the Government alleged, stringent relief was called for"; that during the trial the judge "repeatedly stated that he had not made up his mind on the merits"; and that another of the judge's challenged statements did not "manifes[t] a closed mind on the merits of the case," but rather was "a terse way" of reiterating a prior ruling. *Ibid.* Had we meant the extrajudicial source doctrine to be dispositive under § 144, those further remarks would have been unnecessary.

More to the point, *Grinnell* provides little justification for its announcement of the extrajudicial source rule, relying only upon a citation to *Berger* v. *United States*, 255 U. S. 22, 31 (1921). The cited passage from *Berger*, it turns out, does not bear the weight *Grinnell* places on it, but stands for the more limited proposition that the alleged bias "must be based upon something other than rulings in the case." 255 U. S., at 31. *Berger,* in turn, relies upon an earlier case advancing the same narrow proposition, *Ex parte American Steel Barrel Co.,* 230 U. S. 35, 44 (1913) (predecessor of § 144 "was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise"). There is a real difference, of course, between a rule providing that bias must arise from an extrajudicial source and one providing that judicial rulings alone cannot sustain a challenge for bias. *Grinnell,* therefore, provides a less than satisfactory rationale for reading the extrajudicial source doctrine into § 144 or the disqualification statutes at issue here. It should come as little surprise, then, that the Court does not enlist *Grinnell* to support its adoption of the doctrine.

The Court adverts to, but does not ratify, *ante,* at 549, an alternative rationale: the requirement in § 144 that a litigant's recusal affidavit "be filed not less than 10 days before the beginning of the term at which the proceeding is to be heard," unless "good cause [is] shown for failure to file it within such time." If a litigant seeking disqualification must file an affidavit 10 days before the beginning of the term, the argument goes, the alleged bias cannot arise from events occurring or facts adduced during the litigation. See *Berger, supra,* at 34–35. That rationale fails as well. The 10-day rule has been an anachronism since 1963, when Congress abolished formal terms of court for United States district courts. See 28 U. S. C. § 138. In any event, the rule always had an exception for good cause. And even if the 10-day requirement could justify reading the extrajudicial source rule into § 144, it would not suffice as to § 455(a) or § 455(b)(1), which have no analogous requirement.

The Court is correct to reject yet another view, which has gained currency in several Courts of Appeals, that the term "personal" in §§ 144 and 455(b)(1) provides a textual home for the extrajudicial source doctrine. *Ante,* at 548–550.

Given the flaws with prior attempts to justify the doctrine, the Court advances a new rationale: The doctrine arises from the pejorative connotation of the term "bias or prejudice" in §§ 144 and 455(b)(1) and the converse of the term "impartiality" in § 455(a). *Ante,* at 550, 552–553. This rationale, as the Court acknowledges, does not amount to much. It is beyond dispute that challenged opinions or predispositions arising from outside the courtroom need not be disqualifying. See, *e. g., United States* v. *Conforte,* 624 F. 2d 869, 878–881 (CA9), cert. denied, 449 U. S. 1012 (1980). Likewise, prejudiced opinions based upon matters disclosed at trial may rise to the level where recusal is required. See, *e. g., United States* v. *Holland,* 655 F. 2d 44 (CA5 1981); *Nicodemus* v. *Chrysler Corp.,* 596 F. 2d 152, 155–157, and n. 10 (CA6 1979). From this, the Court is correct to conclude that an allegation concerning some extrajudicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes. *Ante,* at 554–555. The Court nonetheless proceeds, without much explanation, to find "a significant (and often determinative) 'extrajudicial source' *factor*" in those statutes. *Ante,* at 555 (emphasis in original).

This last step warrants further attention. I recognize along with the Court that, as an empirical matter, doubts about a judge's impartiality seldom have merit when the challenged mindset arises as a result of some judicial proceeding. The dichotomy between extrajudicial and intrajudicial sources, then, has some slight utility; it provides a convenient shorthand to explain how courts have confronted the disqualification issue in circumstances that recur with some frequency.

To take a common example, litigants (like petitioners here) often seek disqualification based upon a judge's prior participation, in a judicial capacity, in some related litigation. Those allegations are meritless in most instances, and their prompt rejection is important so the case can proceed. Judges, if faithful to their oath, approach every aspect of each case with a neutral and objective disposition. They understand their duty to render decisions upon a proper record and to disregard earlier judicial contacts with a case or party.

Some may argue that a judge will feel the "motivation to vindicate a prior conclusion" when confronted with a question for the second or third time, for instance, upon trial after a remand. Ratner, Disqualification of Judges for Prior Judicial Actions, 3 How. L. J. 228, 229–230 (1957). Still, we accept the notion that the "conscientious judge will, as far as possible, make himself aware of his biases of this character, and, by that very self-knowledge, nullify their effect." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 652 (CA2 1943). The acquired skill and capacity to disregard extraneous matters is one of the requisites of judicial office. As a matter of sound administration, moreover, it may be necessary and prudent to permit judges to preside over successive causes involving the same parties or issues. See Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 4(a) ("The original motion shall be presented promptly to the judge of the district court who presided at the movant's trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant"). The public character of the prior and present proceedings tends to reinforce the resolve of the judge to weigh with care the propriety of his or her decision to hear the case.

Out of this reconciliation of principle and practice comes the recognition that a judge's prior judicial experience and contacts need not, and often do not, give rise to reasonable questions concerning impartiality.

B

There is no justification, however, for a strict rule dismissing allegations of intrajudicial partiality, or the appearance thereof, in every case. A judge may find it difficult to put aside views formed during some earlier proceeding. In that instance we would expect the judge to heed the judicial oath and step down, but that does not always occur. If through obduracy, honest mistake, or simple inability to attain self-knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source. As I noted above, the central inquiry under § 455(a) is the appearance of partiality, not its place of origin.

I must part, then, from the Court's adoption of a standard that places all but dispositive weight upon the source of the alleged disqualification. The Court holds that opinions arising during the course of judicial proceedings require disqualification under § 455(a) only if they "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Ante,* at 555. That standard is not a fair interpretation of the statute, and is quite insufficient to serve and protect the integrity of the courts. In practical effect, the Court's standard will be difficult to distinguish from a *per se* extrajudicial source rule, the very result the Court professes to reject.

The Court's "impossibility of fair judgment" test bears little resemblance to the objective standard Congress adopted in § 455(a): whether a judge's "impartiality might reasonably be questioned." The statutory standard, which the Court preserves for allegations of an extrajudicial nature, asks whether there is an appearance of partiality. See *Liljeberg,* 486 U. S., at 860 ("[t]he goal of section 455(a) is to avoid even the appearance of partiality") (internal quotation marks omitted); *United States* v. *Chantal,* 902 F. 2d 1018, 1023 (CA1 1990). The Court's standard, in contrast, asks whether fair judgment is impossible, and if this test demands some direct inquiry to the judge's actual, rather than apparent, state of mind, it defeats the underlying goal of § 455(a): to avoid the appearance of partiality even when no partiality exists.

And in all events, the "impossibility of fair judgment" standard remains troubling due to its limited, almost preclusive character. As I interpret it, a § 455(a) challenge would fail even if it were shown that an unfair hearing were likely, for it could be argued that a fair hearing would be possible nonetheless. The integrity of the courts, as well as the interests of the parties and the public, are ill served by this rule. There are bound to be circumstances where a judge's demeanor or attitude would raise reasonable questions concerning impartiality but would not devolve to the point where one would think fair judgment impossible.

When the prevailing standard of conduct imposed by the law for many of society's enterprises is reasonableness, it seems most inappropriate to say that a judge is subject to disqualification only if concerns about his or her predisposed state of mind, or other improper connections to the case, make a fair hearing impossible. That is too lenient a test when the integrity of the judicial system is at stake. Disputes arousing deep passions often come to the courtroom, and justice may appear imperfect to parties and their supporters disappointed by the outcome. This we cannot change. We can, however, enforce society's legitimate expectation that judges maintain, in fact and appearance, the conviction and discipline to resolve those disputes with detachment and impartiality.

The standard that ought to be adopted for all allegations of an apparent fixed predisposition, extrajudicial or otherwise, follows from the statute itself: Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified. Indeed, in such circumstances, I should think that any judge who understands the judicial office and oath would be the first to insist that another judge hear the case.

In matters of ethics, appearance and reality often converge as one. See *Offutt* v. *United States*, 348 U. S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice"); *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923) ("[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done"). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall* v. *Jerrico, Inc.*, 446 U. S. 238, 242 (1980) (noting the importance of "preserv[ing] both the appearance and reality of fairness," which " 'generat[es] the feeling, so important to a popular government, that justice has been done' ") (quoting *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, 172 (1951) (Frankfurter, J., concurring)).

Although the source of an alleged disqualification may be relevant in determining whether there is a reasonable appearance of impartiality, that determination can be explained in a straightforward manner without resort to a nearly dispositive extrajudicial source factor. I would apply the statute as written to all charges of partiality, extrajudicial or otherwise, secure in my view that district and appellate judges possess the wisdom and good sense to distinguish substantial from insufficient allegations and that our rules, as so interpreted, are sufficient to correct the occasional departure.

II

The Court's effort to discern an "often dispositive" extrajudicial source factor in § 455(a) leads it to an additional error along the way. As noted above, the Court begins by explaining that the pejorative connotation of the term "bias or prejudice" demonstrates that the source of an alleged bias is significant under §§ 144 and 455(b)(1). The Court goes on to state that "it is unreasonable to interpret § 455(a) (unless the language *requires* it) as implicitly eliminating a limitation explicitly set forth in § 455(b)." *Ante*, at 553 (emphasis in original). That interpretation, the Court reasons, "would cause the statute, in a significant sense, to contradict itself." *Ante,* at 552.

We rejected that very understanding of the interplay between §§455(a) and (b) in *Liljeberg* v. *Health Services Acquisition Corp.,* 486 U. S. 847 (1988). Respondent in *Liljeberg* sought to disqualify a district judge under §455(a) because the judge (in his capacity as trustee of a university) had a financial interest in the litigation, albeit an interest of which he was unaware. Petitioner opposed disqualification, and asked us to interpret §455(a) in light of §455(b)(4), which provides for disqualification only if the judge "knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding." According to petitioner, the explicit knowledge requirement in §455(b)(4) indicated that Congress intended a similar requirement to govern §455(a). See *Liljeberg,* 486 U. S., at 859, n. 8. Otherwise, petitioner contended, the knowledge requirement in §455(b)(4) would be meaningless. *Ibid.*

In holding for respondent, we emphasized that there were "important differences" between subsections (a) and (b), and concluded that the explicit knowledge requirement under §455(b)(4) does not apply to disqualification motions filed under §455(a). *Id.,* at 859–860, and n. 8. *Liljeberg* teaches, contrary to what the Court says today, that limitations inherent in the various provisions of §455(b) do not, by their own force, govern §455(a) as well. The structure of §455 makes clear that subsections (a) and (b), while addressing many of the same underlying circumstances, are autonomous in operation. Section 455(b) commences with the charge that a judge "shall also disqualify himself in the following circumstances"; Congress' inclusion of the word "also" indicates that subsections (a) and (b) have independent force. Section 455(e), which permits parties to waive grounds for disqualification arising under §455(a), but not §455(b), provides further specific textual confirmation of the difference.

The principal distinction between §§455(a) and (b) is apparent from the face of the statute. Section 455(b) delineates specific circumstances where recusal is mandated; these include instances of actual bias as well as specific instances where actual bias is assumed. See 28 U. S. C. §455(b)(1) ("personal bias or prejudice"); §455(b)(2) (judge "served as [a] lawyer in the matter in controversy" while in private practice); §455(b)(3) (same while judge served in government employment); §455(b)(4) ("financial interest" in the litigation); §455(b)(5) (judge "within the third degree of relationship" to a party, lawyer, or material witness). Section 455(a), in contrast, addresses the appearance of partiality, guaranteeing not only that a partisan judge will not sit, but also that no reasonable person will have that suspicion. See *Liljeberg, supra,* at 860.

Because the appearance of partiality may arise when in fact there is none, see, *e. g., Hall* v. *Small Business Admin.,* 695 F. 2d 175, 179 (CA5 1983); *United States* v. *Ritter,* 540 F. 2d 459, 464 (CA10), cert. denied, 429 U. S. 951 (1976), the reach of §455(a) is broader than that of §455(b). One of the distinct concerns addressed by §455(a) is that the appearance of impartiality be assured whether or not the alleged disqualifying circumstance is also addressed under §455(b). In this respect, the statutory scheme ought to be understood as extending §455(a) beyond the scope of §455(b), and not confining §455(a) in large part, as the Court would have it. See *ante,* at 553–554, n. 2. The broader reach of §455(a) is confirmed by the rule permitting its more comprehensive provisions, but not the absolute rules of §455(b), to be waived. See 28 U. S. C. §455(e). And in all events, I suspect that any attempt to demarcate an "area of overlap" (*ante,* at 553) between §§455(a) and (b) will prove elusive in many instances.

Given the design of the statute, then, it is wrong to impose the explicit limitations of §455(b) upon the more extensive protections afforded by §455(a). See *Liljeberg, supra,* at 859–861, and n. 8. The Court's construction of the statute undercuts the protection Congress put in place when enacting § 455(a) as an independent guarantee of judicial impartiality.

III

The Court describes in all necessary detail the unimpressive allegations of partiality, and the appearance thereof, in this case. The contested rulings and comments by the trial judge were designed to ensure the orderly conduct of petitioners' trial. Nothing in those rulings or comments raises any inference of bias or partiality. I concur in the judgment.

CAMPBELL, AKA SKYYWALKER, ET AL. *v.* ACUFF-ROSE MUSIC, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 92–1292. Argued November 9, 1993—Decided March 7, 1994

Respondent Acuff-Rose Music, Inc., filed suit against petitioners, the members of the rap music group 2 Live Crew and their record company, claiming that 2 Live Crew's song, "Pretty Woman," infringed Acuff-Rose's copyright in Roy Orbison's rock ballad, "Oh, Pretty Woman." The District Court granted summary judgment for 2 Live Crew, holding that its song was a parody that made fair use of the original song. See Copyright Act of 1976, 17 U. S. C. § 107. The Court of Appeals reversed and remanded, holding that the commercial nature of the parody rendered it presumptively unfair under the first of four factors relevant under § 107; that, by taking the "heart" of the original and making it the "heart" of a new work, 2 Live Crew had, qualitatively, taken too much under the third § 107 factor; and that market harm for purposes of the fourth § 107 factor had been established by a presumption attaching to commercial uses.

Held: 2 Live Crew's commercial parody may be a fair use within the meaning of § 107. Pp. 574–594.

(a) Section 107, which provides that "the fair use of a copyrighted work . . . for purposes such as criticism [or] comment . . . is not an infringement . . . ," continues the common-law tradition of fair use adjudication and requires case-by-case analysis rather than bright-line rules. The statutory examples of permissible uses provide only general guidance. The four statutory factors are to be explored and weighed together in light of copyright's purpose of promoting science and the arts. Pp. 574–578.

(b) Parody, like other comment and criticism, may claim fair use. Under the first of the four § 107 factors, "the purpose and character of the use, including whether such use is of a commercial nature . . . ," the enquiry focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is "transformative," altering the original with new expression, meaning, or message. The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use. The heart of any parodist's claim to quote from existing material is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's work. But that tells courts little about where to draw the line. Thus, like other uses, parody has to work its way through the relevant factors. Pp. 578–581.

(c) The Court of Appeals properly assumed that 2 Live Crew's song contains parody commenting on and criticizing the original work, but erred in giving virtually dispositive weight to the commercial nature of that parody by way of a presumption, ostensibly culled from *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 451, that "every commercial use of copyrighted material is presumptively . . . unfair . . . ." The statute makes clear that a work's commercial nature is only one element of the first factor enquiry into its purpose and character, and *Sony* itself called for no hard evidentiary presumption. The Court of Appeals's rule runs counter to *Sony* and to the long common-law tradition of fair use adjudication. Pp. 581–585.

(d) The second § 107 factor, "the nature of the copyrighted work," is not much help in resolving this and other parody cases, since parodies almost invariably copy publicly known, expressive works, like the Orbison song here. P. 586.

(e) The Court of Appeals erred in holding that, as a matter of law, 2 Live Crew copied excessively from the Orbison original under the third § 107 factor, which asks whether "the amount and substantiality of the portion used in relation to the copyrighted work as a whole" are reasonable in relation to the copying's purpose. Even if 2 Live Crew's copying of the original's first line of lyrics and characteristic opening bass riff may be said to go to the original's "heart," that heart is what most readily conjures up the song for parody, and it is the heart at which parody takes aim. Moreover, 2 Live Crew thereafter departed markedly from the Orbison lyrics and produced otherwise distinctive music. As to the lyrics, the copying was not excessive in relation to the song's parodic purpose. As to the music, this Court expresses no opinion whether repetition of the bass riff is excessive copying, but remands to permit evaluation of the amount taken, in light of the song's parodic purpose and character, its transformative elements, and considerations of the potential for market substitution. Pp. 586–589.

(f) The Court of Appeals erred in resolving the fourth § 107 factor, "the effect of the use upon the potential market for or value of the copyrighted work," by presuming, in reliance on *Sony, supra,* at 451, the likelihood of significant market harm based on 2 Live Crew's use for commercial gain. No "presumption" or inference of market harm that might find support in *Sony* is applicable to a case involving something beyond mere duplication for commercial purposes. The cognizable harm is market substitution, not any harm from criticism. As to parody pure and simple, it is unlikely that the work will act as a substitute for the original, since the two works usually serve different market functions. The fourth factor requires courts also to consider the potential market for derivative works. See, *e. g.*, *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 568. If the later work has cognizable substitution effects in protectible markets for derivative works, the law will look beyond the criticism to the work's other elements. 2 Live Crew's song comprises not only parody but also rap music. The absence of evidence or affidavits addressing the effect of 2 Live Crew's song on the derivative market for a nonparody, rap version of "Oh, Pretty Woman" disentitled 2 Live Crew, as the proponent of the affirmative defense of fair use, to summary judgment. Pp. 590–594.

972 F. 2d 1429, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion, *post*, p. 596.

Bruce S. Rogow argued the cause for petitioners. With him on the briefs was *Alan Mark Turk*.

Sidney S. Rosdeitcher argued the cause for respondent. With him on the brief were *Peter L. Felcher* and *Stuart M. Cobert*.*

JUSTICE SOUTER delivered the opinion of the Court.

We are called upon to decide whether 2 Live Crew's commercial parody of Roy Orbison's song, "Oh, Pretty Woman,"

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union by *Steven F. Reich, Steven R. Shapiro, Marjorie Heins*, and *John A. Powell;* for Capitol Steps Production, Inc., et al. by *William C. Lane;* for the Harvard Lampoon, Inc., by *Robert H. Loeffler* and *Jonathan Band;* for the PEN American Center by *Leon Friedman;* and for Robert C. Berry et al. by *Alfred C. Yen.*

Briefs of *amici curiae* urging affirmance were filed for the National Music Publishers' Association, Inc., et al. by *Marvin E. Frankel* and *Michael S. Oberman;* and for Fred Ebb et al. by *Stephen Rackow Kaye, Charles S. Sims*, and *Jon A. Baumgarten.*

Briefs of *amici curiae* were filed for Home Box Office et al. by *Daniel M. Waggoner, P. Cameron DeVore, George Vradenburg, Bonnie Bogin*, and *Richard Cotton;* and for Warner Bros. by *Cary H. Sherman* and *Robert Alan Garrett.*

may be a fair use within the meaning of the Copyright Act of 1976, 17 U. S. C. § 107 (1988 ed. and Supp. IV). Although the District Court granted summary judgment for 2 Live Crew, the Court of Appeals reversed, holding the defense of fair use barred by the song's commercial character and excessive borrowing. Because we hold that a parody's commercial character is only one element to be weighed in a fair use enquiry, and that insufficient consideration was given to the nature of parody in weighing the degree of copying, we reverse and remand.

I

In 1964, Roy Orbison and William Dees wrote a rock ballad called "Oh, Pretty Woman" and assigned their rights in it to respondent Acuff-Rose Music, Inc. See Appendix A, *infra*, at 594. Acuff-Rose registered the song for copyright protection.

Petitioners Luther R. Campbell, Christopher Wongwon, Mark Ross, and David Hobbs are collectively known as 2 Live Crew, a popular rap music group.[1] In 1989, Campbell wrote a song entitled "Pretty Woman," which he later described in an affidavit as intended, "through comical lyrics, to satirize the original work . . . ." App. to Pet. for Cert. 80a. On July 5, 1989, 2 Live Crew's manager informed Acuff-Rose that 2 Live Crew had written a parody of "Oh, Pretty Woman," that they would afford all credit for ownership and authorship of the original song to Acuff-Rose, Dees, and Orbison, and that they were willing to pay a fee for the use they wished to make of it. Enclosed with the letter were a copy of the lyrics and a recording of 2 Live Crew's song. See Appendix B, *infra*, at 595. Acuff-Rose's agent refused permission, stating that "I am aware of the success enjoyed by 'The 2 Live Crews', but I must inform you that we cannot permit the use of a parody of 'Oh, Pretty Woman.'" App. to Pet. for Cert. 85a. Nonetheless, in June or July 1989,[2] 2 Live Crew released records, cassette tapes, and compact discs of "Pretty Woman" in a collection of songs entitled "As Clean As They Wanna Be." The albums and compact discs identify the authors of "Pretty Woman" as Orbison and Dees and its publisher as Acuff-Rose.

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[1] Rap has been defined as a "style of black American popular music consisting of improvised rhymes performed to a rhythmic accompaniment." The Norton/Grove Concise Encyclopedia of Music 613 (1988). 2 Live Crew plays "[b]ass music," a regional, hip-hop style of rap from the Liberty City area of Miami, Florida. Brief for Petitioners 34.

Almost a year later, after nearly a quarter of a million copies of the recording had been sold, Acuff-Rose sued 2 Live Crew and its record company, Luke Skyywalker Records, for copyright infringement. The District Court granted summary judgment for 2 Live Crew,[3] reasoning that the commercial purpose of 2 Live Crew's song was no bar to fair use; that 2 Live Crew's version was a parody, which "quickly degenerates into a play on words, substituting predictable lyrics with shocking ones" to show "how bland and banal the Orbison song" is; that 2 Live Crew had taken no more than was necessary to "conjure up" the original in order to parody it; and that it was "extremely unlikely that 2 Live Crew's song could adversely affect the market for the original." 754 F. Supp. 1150, 1154–1155, 1157–1158 (MD Tenn. 1991). The District Court weighed these factors and held that 2 Live Crew's song made fair use of Orbison's original. *Id.*, at 1158–1159.

The Court of Appeals for the Sixth Circuit reversed and remanded. 972 F. 2d 1429, 1439 (1992). Although it assumed for the purpose of its opinion that 2 Live Crew's song was a parody of the Orbison original, the Court of Appeals thought the District Court had put too little emphasis on the fact that "every commercial use . . . is presumptively . . . unfair," *Sony Corp. of America* v. *Universal City Studios, Inc.*, 464 U. S. 417, 451 (1984), and it held that "the admittedly commercial nature" of the parody "requires the conclusion" that the first of four factors relevant under the statute weighs against a finding of fair use. 972 F. 2d, at 1435, 1437. Next, the Court of Appeals determined that, by "taking the heart of the original and making it the heart of a new work," 2 Live Crew had, qualitatively, taken too much. *Id.*, at 1438. Finally, after noting that the effect on the potential market for the original (and the market for derivative works) is "undoubtedly the single most important element of fair use," *Harper & Row, Publishers, Inc.* v. *Nation Enterprises,* 471 U. S. 539, 566 (1985), the Court of Appeals faulted the District Court for "refus[ing] to indulge the presumption" that "harm for purposes of the fair use analysis has been established by the presumption attaching to commercial uses." 972 F. 2d, at 1438–1439. In sum, the court concluded that its "blatantly commercial purpose . . . prevents this parody from being a fair use." *Id.*, at 1439.

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[2] The parties argue about the timing. 2 Live Crew contends that the album was released on July 15, and the District Court so held. 754 F. Supp. 1150, 1152 (MD Tenn. 1991). The Court of Appeals states that Campbell's affidavit puts the release date in June, and chooses that date. 972 F. 2d 1429, 1432 (CA6 1992). We find the timing of the request irrelevant for purposes of this enquiry. See n. 18, *infra*, discussing good faith.

[3] 2 Live Crew's motion to dismiss was converted to a motion for summary judgment. Acuff-Rose defended against the motion, but filed no cross-motion.

We granted certiorari, 507 U. S. 1003 (1993), to determine whether 2 Live Crew's commercial parody could be a fair use.

II

It is uncontested here that 2 Live Crew's song would be an infringement of Acuff-Rose's rights in "Oh, Pretty Woman," under the Copyright Act of 1976, 17 U. S. C. § 106 (1988 ed. and Supp. IV), but for a finding of fair use through parody.[4]

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[4] Section 106 provides in part:

"Subject to sections 107 through 120, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

"(1) to reproduce the copyrighted work in copies or phonorecords;

"(2) to prepare derivative works based upon the copyrighted work;

From the infancy of copyright protection, some opportunity for fair use of copyrighted materials has been thought necessary to fulfill copyright's very purpose, "[t]o promote the Progress of Science and useful Arts . . . ." U. S. Const., Art. I, § 8, cl. 8.[5] For as Justice Story explained, "[i]n truth, in literature, in science and in art, there are, and can be, few, if any, things, which in an abstract sense, are strictly new and original throughout. Every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before." *Emerson* v. *Davies*, 8 F. Cas. 615, 619 (No. 4,436) (CCD Mass. 1845). Similarly, Lord Ellenborough expressed the inherent tension in the need simultaneously to protect copyrighted material and to allow others to build upon it when he wrote, "while I shall think myself bound to secure every man in the enjoyment of his copy-right, one must not put manacles upon science."

"(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending . . . ."

A derivative work is defined as one "based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work.'" 17 U. S. C. § 101.

2 Live Crew concedes that it is not entitled to a compulsory license under § 115 because its arrangement changes "the basic melody or fundamental character" of the original. § 115(a)(2).

[5] The exclusion of facts and ideas from copyright protection serves that goal as well. See § 102(b) ("In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery . . ."); *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 359 (1991) ("[F]acts contained in existing works may be freely copied"); *Harper & Row, Publishers, Inc.* v. *Nation Enterprises*, 471 U. S. 539, 547 (1985) (copyright owner's rights exclude facts and ideas, and fair use).

Carey v. *Kearsley*, 4 Esp. 168, 170, 170 Eng. Rep. 679, 681 (K. B. 1803). In copyright cases brought under the Statute of Anne of 1710,[6] English courts held that in some instances "fair abridgements" would not infringe an author's rights, see W. Patry, The Fair Use Privilege in Copyright Law 6–17 (1985) (hereinafter Patry); Leval, Toward a Fair Use Standard, 103 Harv. L. Rev. 1105 (1990) (hereinafter Leval), and although the First Congress enacted our initial copyright statute, Act of May 31, 1790, 1 Stat. 124, without any explicit reference to "fair use," as it later came to be known,[7] the doctrine was recognized by the American courts nonetheless.

In *Folsom* v. *Marsh*, 9 F. Cas. 342 (No. 4,901) (CCD Mass. 1841), Justice Story distilled the essence of law and methodology from the earlier cases: "look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work." *Id.*, at 348. Thus expressed, fair use remained exclusively judge-made doctrine until the passage of the 1976 Copyright Act, in which Justice Story's summary is discernible:[8]

> "§ 107. Limitations on exclusive rights: Fair use
>
> "Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular

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[6] An Act for the Encouragement of Learning, 8 Anne, ch. 19.

[7] Patry 27, citing *Lawrence* v. *Dana*, 15 F. Cas. 26, 60 (No. 8,136) (CCD Mass. 1869).

[8] Leval 1105. For a historical account of the development of the fair use doctrine, see Patry 1–64.

> case is a fair use the factors to be considered shall include—
>
> "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
>
> "(2) the nature of the copyrighted work;
>
> "(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
>
> "(4) the effect of the use upon the potential market for or value of the copyrighted work.
>
> "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors." 17 U. S. C. § 107 (1988 ed. and Supp. IV).

Congress meant § 107 "to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way" and intended that courts continue the common-law tradition of fair use adjudication. H. R. Rep. No. 94–1476, p. 66 (1976) (hereinafter House Report); S. Rep. No. 94–473, p. 62 (1975) (hereinafter Senate Report). The fair use doctrine thus "permits [and requires] courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster." *Stewart* v. *Abend,* 495 U. S. 207, 236 (1990) (internal quotation marks and citation omitted).

The task is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis. *Harper & Row,* 471 U. S., at 560; *Sony,* 464 U. S., at 448, and n. 31; House Report, pp. 65–66; Senate Report, p. 62. The text employs the terms "including" and "such as" in the preamble paragraph to indicate the "illustrative and not limitative" function of the examples given, § 101; see *Harper & Row, supra,* at 561, which thus provide only general guidance about the sorts of copying that courts and

Congress most commonly had found to be fair uses.[9] Nor may the four statutory factors be treated in isolation, one from another. All are to be explored, and the results weighed together, in light of the purposes of copyright. See Leval 1110–1111; Patry & Perlmutter, Fair Use Misconstrued: Profit, Presumptions, and Parody, 11 Cardozo Arts & Ent. L. J. 667, 685–687 (1993) (hereinafter Patry & Perlmutter).[10]

A

The first factor in a fair use enquiry is "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes." § 107(1). This factor draws on Justice Story's formulation, "the nature and objects of the selections made." *Folsom* v. *Marsh, supra,* at 348. The enquiry here may be guided by the examples given in the preamble to § 107, looking to whether the use is for criticism, or comment, or news reporting, and the like, see § 107. The central purpose of this investigation is to see, in Justice Story's words, whether the new work merely "supersede[s] the objects" of the original creation, *Folsom* v. *Marsh, supra,* at 348; accord, *Harper & Row, supra,* at 562 ("supplanting" the original), or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message; it asks, in other words, whether and to what extent the new work is "transformative." Leval 1111. Although such transformative use is not absolutely necessary for a finding of fair use, *Sony, supra,* at 455, n. 40,[11] the goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works. Such works thus lie at the heart of the fair use doctrine's guarantee of breathing space within the confines of copyright, see, *e. g., Sony, supra,* at 478–480 (BLACKMUN, J., dissenting), and the more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.

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[9] See Senate Report, p. 62 ("[W]hether a use referred to in the first sentence of section 107 is a fair use in a particular case will depend upon the application of the determinative factors").

[10] Because the fair use enquiry often requires close questions of judgment as to the extent of permissible borrowing in cases involving parodies (or other critical works), courts may also wish to bear in mind that the goals of the copyright law, "to stimulate the creation and publication of edifying matter," Leval 1134, are not always best served by automatically granting injunctive relief when parodists are found to have gone beyond the bounds of fair use. See 17 U. S. C. § 502(a) (court "*may* . . . grant . . . injunctions on such terms as it may deem reasonable to prevent or restrain infringement") (emphasis added); Leval 1132 (while in the "vast majority of cases, [an injunctive] remedy is justified because most infringements are simple piracy," such cases are "worlds apart from many of those raising reasonable contentions of fair use" where "there may be a strong public interest in the publication of the secondary work [and] the copyright owner's interest may be adequately protected by an award of damages for whatever infringement is found"); *Abend* v. *MCA, Inc.*, 863 F. 2d 1465, 1479 (CA9 1988) (finding "special circumstances" that would cause "great injustice" to defendants and "public injury" were injunction to issue), aff'd *sub nom. Stewart* v. *Abend*, 495 U. S. 207 (1990).

This Court has only once before even considered whether parody may be fair use, and that time issued no opinion because of the Court's equal division. *Benny* v. *Loew's Inc.,* 239 F. 2d 532 (CA9 1956), aff'd *sub nom. Columbia Broadcasting System, Inc.* v. *Loew's Inc.,* 356 U. S. 43 (1958). Suffice it to say now that parody has an obvious claim to transformative value, as Acuff-Rose itself does not deny. Like less ostensibly humorous forms of criticism, it can provide social benefit, by shedding light on an earlier work, and, in the process, creating a new one. We thus line up with the courts that have held that parody, like other comment or criticism, may claim fair use under § 107. See, *e. g., Fisher* v. *Dees,* 794 F. 2d 432 (CA9 1986) ("When Sonny Sniffs Glue," a parody of "When Sunny Gets Blue," is fair use); *Elsmere Music, Inc.* v. *National Broadcasting Co.,* 482 F. Supp. 741

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[11] The obvious statutory exception to this focus on transformative uses is the straight reproduction of multiple copies for classroom distribution.

(SDNY), aff'd, 623 F. 2d 252 (CA2 1980) ("I Love Sodom," a "Saturday Night Live" television parody of "I Love New York," is fair use); see also House Report, p. 65; Senate Report, p. 61 ("[U]se in a parody of some of the content of the work parodied" may be fair use).

The germ of parody lies in the definition of the Greek *parodeia,* quoted in Judge Nelson's Court of Appeals dissent, as "a song sung alongside another." 972 F. 2d, at 1440, quoting 7 Encyclopedia Britannica 768 (15th ed. 1975). Modern dictionaries accordingly describe a parody as a "literary or artistic work that imitates the characteristic style of an author or a work for comic effect or ridicule,"[12] or as a "composition in prose or verse in which the characteristic turns of thought and phrase in an author or class of authors are imitated in such a way as to make them appear ridiculous."[13] For the purposes of copyright law, the nub of the definitions, and the heart of any parodist's claim to quote from existing material, is the use of some elements of a prior author's composition to create a new one that, at least in part, comments on that author's works. See, *e. g., Fisher* v. *Dees, supra,* at 437; *MCA, Inc.* v. *Wilson,* 677 F. 2d 180, 185 (CA2 1981). If, on the contrary, the commentary has no critical bearing on the substance or style of the original composition, which the alleged infringer merely uses to get attention or to avoid the drudgery in working up something fresh, the claim to fairness in borrowing from another's work diminishes accordingly (if it does not vanish), and other factors, like the extent of its commerciality, loom larger.[14] Parody needs to mimic an original to make its point, and so has some claim to use the creation of its victim's (or collective victims') imagination, whereas satire can stand on its own two feet and so requires justification for the very act of borrowing.[15] See *ibid.;* Bisceglia, Parody and Copyright Protection: Turning the Balancing Act Into a Juggling Act, in ASCAP, Copyright Law Symposium, No. 34, p. 25 (1987).

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[12] American Heritage Dictionary 1317 (3d ed. 1992).

[13] 11 Oxford English Dictionary 247 (2d ed. 1989).

[14] A parody that more loosely targets an original than the parody presented here may still be sufficiently aimed at an original work to come within our analysis of parody. If a parody whose wide dissemination in the market runs the risk of serving as a substitute for the original or licensed derivatives (see *infra,* at 590–594, discussing factor four), it is more incumbent on one claiming fair use to establish the extent of transformation and the parody's critical relationship to the original. By con-

The fact that parody can claim legitimacy for some appropriation does not, of course, tell either parodist or judge much about where to draw the line. Like a book review quoting the copyrighted material criticized, parody may or may not be fair use, and petitioners' suggestion that any parodic use is presumptively fair has no more justification in law or fact than the equally hopeful claim that any use for news reporting should be presumed fair, see *Harper & Row,* 471 U. S., at 561. The Act has no hint of an evidentiary preference for parodists over their victims, and no workable presumption for parody could take account of the fact that parody often shades into satire when society is lampooned through its creative artifacts, or that a work may contain both parodic and nonparodic elements. Accordingly, parody, like any other use, has to work its way through the relevant factors, and be judged case by case, in light of the ends of the copyright law.

Here, the District Court held, and the Court of Appeals assumed, that 2 Live Crew's "Pretty Woman" contains par-

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trast, when there is little or no risk of market substitution, whether because of the large extent of transformation of the earlier work, the new work's minimal distribution in the market, the small extent to which it borrows from an original, or other factors, taking parodic aim at an original is a less critical factor in the analysis, and looser forms of parody may be found to be fair use, as may satire with lesser justification for the borrowing than would otherwise be required.

[15] Satire has been defined as a work "in which prevalent follies or vices are assailed with ridicule," 14 Oxford English Dictionary, *supra,* at 500, or are "attacked through irony, derision, or wit," American Heritage Dictionary, *supra,* at 1604.

ody, commenting on and criticizing the original work, whatever it may have to say about society at large. As the District Court remarked, the words of 2 Live Crew's song copy the original's first line, but then "quickly degenerat[e] into a play on words, substituting predictable lyrics with shocking ones . . . [that] derisively demonstrat[e] how bland and banal the Orbison song seems to them." 754 F. Supp., at 1155 (footnote omitted). Judge Nelson, dissenting below, came to the same conclusion, that the 2 Live Crew song "was clearly intended to ridicule the white-bread original" and "reminds us that sexual congress with nameless streetwalkers is not necessarily the stuff of romance and is not necessarily without its consequences. The singers (there are several) have the same thing on their minds as did the lonely man with the nasal voice, but here there is no hint of wine and roses." 972 F. 2d, at 1442. Although the majority below had difficulty discerning any criticism of the original in 2 Live Crew's song, it assumed for purposes of its opinion that there was some. *Id.*, at 1435–1436, and n. 8.

We have less difficulty in finding that critical element in 2 Live Crew's song than the Court of Appeals did, although having found it we will not take the further step of evaluating its quality. The threshold question when fair use is raised in defense of parody is whether a parodic character may reasonably be perceived.[16] Whether, going beyond that, parody is in good taste or bad does not and should not matter to fair use. As Justice Holmes explained, "[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of [a work], outside of the narrowest and most obvious limits. At the one extreme some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke." *Bleistein* v. *Donaldson Lithographing Co.*, 188 U. S. 239, 251 (1903) (circus posters have copyright protection); cf. *Yankee Publishing Inc.* v. *News America Publishing, Inc.*, 809 F. Supp. 267, 280 (SDNY 1992) (Leval, J.) ("First Amendment protections do not apply only to those who speak clearly, whose jokes are funny, and whose parodies succeed") (trademark case).

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[16] The only further judgment, indeed, that a court may pass on a work goes to an assessment of whether the parodic element is slight or great, and the copying small or extensive in relation to the parodic element, for a work with slight parodic element and extensive copying will be more likely to merely "supersede the objects" of the original. See *infra*, at 586–594, discussing factors three and four.

While we might not assign a high rank to the parodic element here, we think it fair to say that 2 Live Crew's song reasonably could be perceived as commenting on the original or criticizing it, to some degree. 2 Live Crew juxtaposes the romantic musings of a man whose fantasy comes true, with degrading taunts, a bawdy demand for sex, and a sigh of relief from paternal responsibility. The later words can be taken as a comment on the naiveté of the original of an earlier day, as a rejection of its sentiment that ignores the ugliness of street life and the debasement that it signifies. It is this joinder of reference and ridicule that marks off the author's choice of parody from the other types of comment and criticism that traditionally have had a claim to fair use protection as transformative works.[17]

The Court of Appeals, however, immediately cut short the enquiry into 2 Live Crew's fair use claim by confining its treatment of the first factor essentially to one relevant fact, the commercial nature of the use. The court then inflated the significance of this fact by applying a presumption ostensibly culled from *Sony,* that "every commercial use of copyrighted material is presumptively . . . unfair . . . ." *Sony,* 464 U. S., at 451. In giving virtually dispositive weight to the commercial nature of the parody, the Court of Appeals erred.

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[17] We note in passing that 2 Live Crew need not label their whole album, or even this song, a parody in order to claim fair use protection, nor should 2 Live Crew be penalized for this being its first parodic essay. Parody serves its goals whether labeled or not, and there is no reason to require parody to state the obvious (or even the reasonably perceived). See Patry & Perlmutter 716–717.

The language of the statute makes clear that the commercial or nonprofit educational purpose of a work is only one element of the first factor enquiry into its purpose and character. Section 107(1) uses the term "including" to begin the dependent clause referring to commercial use, and the main clause speaks of a broader investigation into "purpose and character." As we explained in *Harper & Row,* Congress resisted attempts to narrow the ambit of this traditional enquiry by adopting categories of presumptively fair use, and it urged courts to preserve the breadth of their traditionally ample view of the universe of relevant evidence. 471 U. S., at 561; House Report, p. 66. Accordingly, the mere fact that a use is educational and not for profit does not insulate it from a finding of infringement, any more than the commercial character of a use bars a finding of fairness. If, indeed, commerciality carried presumptive force against a finding of fairness, the presumption would swallow nearly all of the illustrative uses listed in the preamble paragraph of § 107, including news reporting, comment, criticism, teaching, scholarship, and research, since these activities "are generally conducted for profit in this country." *Harper & Row, supra,* at 592 (Brennan, J., dissenting). Congress could not have intended such a rule, which certainly is not inferable from the common-law cases, arising as they did from the world of letters in which Samuel Johnson could pronounce that "[n]o man but a blockhead ever wrote, except for money." 3 Boswell's Life of Johnson 19 (G. Hill ed. 1934).

Sony itself called for no hard evidentiary presumption. There, we emphasized the need for a "sensitive balancing of interests," 464 U. S., at 455, n. 40, noted that Congress had "eschewed a rigid, bright-line approach to fair use," *id.,* at

449, n. 31, and stated that the commercial or nonprofit educational character of a work is "not conclusive," *id.*, at 448–449, but rather a fact to be "weighed along with other[s] in fair use decisions," *id.*, at 449, n. 32 (quoting House Report, p. 66). The Court of Appeals's elevation of one sentence from *Sony* to a *per se* rule thus runs as much counter to *Sony* itself as to the long common-law tradition of fair use adjudication. Rather, as we explained in *Harper & Row, Sony* stands for the proposition that the "fact that a publication was commercial as opposed to nonprofit is a separate factor that tends to weigh against a finding of fair use." 471 U. S., at 562. But that is all, and the fact that even the force of that tendency will vary with the context is a further reason against elevating commerciality to hard presumptive significance. The use, for example, of a copyrighted work to advertise a product, even in a parody, will be entitled to less indulgence under the first factor of the fair use enquiry than the sale of a parody for its own sake, let alone one performed a single time by students in school. See generally Patry & Perlmutter 679–680; *Fisher* v. *Dees*, 794 F. 2d, at 437; *Maxtone-Graham* v. *Burtchaell*, 803 F. 2d 1253, 1262 (CA2 1986); *Sega Enterprises Ltd.* v. *Accolade, Inc.*, 977 F. 2d 1510, 1522 (CA9 1992).[18]

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[18] Finally, regardless of the weight one might place on the alleged infringer's state of mind, compare *Harper & Row*, 471 U. S., at 562 (fair use presupposes good faith and fair dealing) (quotation marks omitted), with *Folsom* v. *Marsh*, 9 F. Cas. 342, 349 (No. 4,901) (CCD Mass. 1841) (good faith does not bar a finding of infringement); Leval 1126–1127 (good faith irrelevant to fair use analysis), we reject Acuff-Rose's argument that 2 Live Crew's request for permission to use the original should be weighed against a finding of fair use. Even if good faith were central to fair use, 2 Live Crew's actions do not necessarily suggest that they believed their version was not fair use; the offer may simply have been made in a good-faith effort to avoid this litigation. If the use is otherwise fair, then no permission need be sought or granted. Thus, being denied permission to use a work does not weigh against a finding of fair use. See *Fisher* v. *Dees*, 794 F. 2d 432, 437 (CA9 1986).

B

The second statutory factor, "the nature of the copyrighted work," § 107(2), draws on Justice Story's expression, the "value of the materials used." *Folsom* v. *Marsh,* 9 F. Cas., at 348. This factor calls for recognition that some works are closer to the core of intended copyright protection than others, with the consequence that fair use is more difficult to establish when the former works are copied. See, *e. g., Stewart* v. *Abend,* 495 U. S., at 237–238 (contrasting fictional short story with factual works); *Harper & Row,* 471 U. S., at 563–564 (contrasting soon-to-be-published memoir with published speech); *Sony,* 464 U. S., at 455, n. 40 (contrasting motion pictures with news broadcasts); *Feist,* 499 U. S., at 348–351 (contrasting creative works with bare factual compilations); 3 M. Nimmer & D. Nimmer, Nimmer on Copyright § 13.05[A][2] (1993) (hereinafter Nimmer); Leval 1116. We agree with both the District Court and the Court of Appeals that the Orbison original's creative expression for public dissemination falls within the core of the copyright's protective purposes. 754 F. Supp., at 1155–1156; 972 F. 2d, at 1437. This fact, however, is not much help in this case, or ever likely to help much in separating the fair use sheep from the infringing goats in a parody case, since parodies almost invariably copy publicly known, expressive works.

C

The third factor asks whether "the amount and substantiality of the portion used in relation to the copyrighted work as a whole," § 107(3) (or, in Justice Story's words, "the quantity and value of the materials used," *Folsom* v. *Marsh, supra,* at 348) are reasonable in relation to the purpose of the copying. Here, attention turns to the persuasiveness of a parodist's justification for the particular copying done, and the enquiry will harken back to the first of the statutory factors, for, as in prior cases, we recognize that the extent of permissible copying varies with the purpose and character of the use. See *Sony, supra,* at 449–450 (reproduction of entire work "does not have its ordinary effect of militating against a finding of fair use" as to home videotaping of television programs); *Harper & Row, supra,* at 564 ("[E]ven substantial quotations might qualify as fair use in a review of a published work or a news account of a speech" but not in a scoop of a soon-to-be-published memoir). The facts bearing on this factor will also tend to address the fourth, by revealing the degree to which the parody may serve as a market substitute for the original or potentially licensed derivatives. See Leval 1123.

The District Court considered the song's parodic purpose in finding that 2 Live Crew had not helped themselves overmuch. 754 F. Supp., at 1156–1157. The Court of Appeals disagreed, stating that "[w]hile it may not be inappropriate to find that no more was taken than necessary, the copying was qualitatively substantial. . . . We conclude that taking the heart of the original and making it the heart of a new work was to purloin a substantial portion of the essence of the original." 972 F. 2d, at 1438.

The Court of Appeals is of course correct that this factor calls for thought not only about the quantity of the materials used, but about their quality and importance, too. In *Harper & Row,* for example, the Nation had taken only some 300 words out of President Ford's memoirs, but we signaled the significance of the quotations in finding them to amount to "the heart of the book," the part most likely to be newsworthy and important in licensing serialization. 471 U. S., at 564–566, 568 (internal quotation marks omitted). We also agree with the Court of Appeals that whether "a substantial portion of the infringing work was copied verbatim" from the copyrighted work is a relevant question, see *id.,* at 565, for it may reveal a dearth of transformative character or purpose under the first factor, or a greater likelihood of market harm under the fourth; a work composed primarily of an original, particularly its heart, with little added or changed, is more likely to be a merely superseding use, fulfilling demand for the original.

Where we part company with the court below is in applying these guides to parody, and in particular to parody in the song before us. Parody presents a difficult case. Parody's humor, or in any event its comment, necessarily springs from recognizable allusion to its object through distorted imitation. Its art lies in the tension between a known original and its parodic twin. When parody takes aim at a particular original work, the parody must be able to "conjure up" at least enough of that original to make the object of its critical wit recognizable. See, *e. g., Elsmere Music,* 623 F. 2d, at 253, n. 1; *Fisher* v. *Dees,* 794 F. 2d, at 438–439. What makes for this recognition is quotation of the original's most distinctive or memorable features, which the parodist can be sure the audience will know. Once enough has been taken to assure identification, how much more is reasonable will depend, say, on the extent to which the song's overriding purpose and character is to parody the original or, in contrast, the likelihood that the parody may serve as a market substitute for the original. But using some characteristic features cannot be avoided.

We think the Court of Appeals was insufficiently appreciative of parody's need for the recognizable sight or sound when it ruled 2 Live Crew's use unreasonable as a matter of law. It is true, of course, that 2 Live Crew copied the characteristic opening bass riff (or musical phrase) of the original, and true that the words of the first line copy the Orbison lyrics. But if quotation of the opening riff and the first line may be said to go to the "heart" of the original, the heart is also what most readily conjures up the song for parody, and it is the heart at which parody takes aim. Copying does not become excessive in relation to parodic purpose merely because the portion taken was the original's heart. If 2 Live Crew had copied a significantly less memorable part of the original, it is difficult to see how its parodic character would have come through. See *Fisher* v. *Dees, supra,* at 439.

This is not, of course, to say that anyone who calls himself a parodist can skim the cream and get away scot free. In parody, as in news reporting, see *Harper & Row, supra,* context is everything, and the question of fairness asks what else the parodist did besides go to the heart of the original. It is significant that 2 Live Crew not only copied the first line of the original, but thereafter departed markedly from the Orbison lyrics for its own ends. 2 Live Crew not only copied the bass riff and repeated it,[19] but also produced otherwise distinctive sounds, interposing "scraper" noise, overlaying the music with solos in different keys, and altering the drum beat. See 754 F. Supp., at 1155. This is not a case, then, where "a substantial portion" of the parody itself is composed of a "verbatim" copying of the original. It is not, that is, a case where the parody is so insubstantial, as compared to the copying, that the third factor must be resolved as a matter of law against the parodists.

Suffice it to say here that, as to the lyrics, we think the Court of Appeals correctly suggested that "no more was taken than necessary," 972 F. 2d, at 1438, but just for that reason, we fail to see how the copying can be excessive in relation to its parodic purpose, even if the portion taken is the original's "heart." As to the music, we express no opinion whether repetition of the bass riff is excessive copying, and we remand to permit evaluation of the amount taken, in light of the song's parodic purpose and character, its transformative elements, and considerations of the potential for market substitution sketched more fully below.

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[19] This may serve to heighten the comic effect of the parody, as one witness stated, App. 32a, Affidavit of Oscar Brand; see also *Elsmere Music, Inc.* v. *National Broadcasting Co.,* 482 F. Supp. 741, 747 (SDNY 1980) (repetition of "I Love Sodom"), or serve to dazzle with the original's music, as Acuff-Rose now contends.

D

The fourth fair use factor is "the effect of the use upon the potential market for or value of the copyrighted work." § 107(4). It requires courts to consider not only the extent of market harm caused by the particular actions of the alleged infringer, but also "whether unrestricted and widespread conduct of the sort engaged in by the defendant . . . would result in a substantially adverse impact on the potential market" for the original. Nimmer § 13.05[A][4], p. 13–102.61 (footnote omitted); accord, *Harper & Row,* 471 U. S., at 569; Senate Report, p. 65; *Folsom* v. *Marsh,* 9 F. Cas., at 349. The enquiry "must take account not only of harm to the original but also of harm to the market for derivative works." *Harper & Row, supra,* at 568.

Since fair use is an affirmative defense,[20] its proponent would have difficulty carrying the burden of demonstrating fair use without favorable evidence about relevant markets.[21] In moving for summary judgment, 2 Live Crew left themselves at just such a disadvantage when they failed to address the effect on the market for rap derivatives, and confined themselves to uncontroverted submissions that there was no likely effect on the market for the original. They did not, however, thereby subject themselves to the evidentiary presumption applied by the Court of Appeals. In assessing the likelihood of significant market harm, the Court of Appeals quoted from language in *Sony* that " '[i]f the intended use is for commercial gain, that likelihood may be presumed. But if it is for a noncommercial purpose, the likelihood must be demonstrated.' " 972 F. 2d, at 1438, quoting *Sony*, 464 U. S., at 451. The court reasoned that because "the use of the copyrighted work is wholly commercial, . . . we presume that a likelihood of future harm to Acuff-Rose exists." 972 F. 2d, at 1438. In so doing, the court resolved the fourth factor against 2 Live Crew, just as it had the first, by applying a presumption about the effect of commercial use, a presumption which as applied here we hold to be error.

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[20] *Harper & Row,* 471 U. S., at 561; H. R. Rep. No. 102–836, p. 3, n. 3 (1992).

[21] Even favorable evidence, without more, is no guarantee of fairness. Judge Leval gives the example of the film producer's appropriation of a composer's previously unknown song that turns the song into a commercial success; the boon to the song does not make the film's simple copying fair. Leval 1124, n. 84. This factor, no less than the other three, may be addressed only through a "sensitive balancing of interests." *Sony Corp. of America* v. *Universal City Studios, Inc.,* 464 U. S. 417, 455, n. 40 (1984). Market harm is a matter of degree, and the importance of this factor will vary, not only with the amount of harm, but also with the relative strength of the showing on the other factors.

No "presumption" or inference of market harm that might find support in *Sony* is applicable to a case involving something beyond mere duplication for commercial purposes. *Sony's* discussion of a presumption contrasts a context of verbatim copying of the original in its entirety for commercial purposes, with the noncommercial context of *Sony* itself (home copying of television programming). In the former circumstances, what *Sony* said simply makes common sense: when a commercial use amounts to mere duplication of the entirety of an original, it clearly "supersede[s] the objects," *Folsom* v. *Marsh, supra,* at 348, of the original and serves as a market replacement for it, making it likely that cognizable market harm to the original will occur. *Sony, supra,* at 451. But when, on the contrary, the second use is transformative, market substitution is at least less certain, and market harm may not be so readily inferred. Indeed, as to parody pure and simple, it is more likely that the new work will not affect the market for the original in a way cognizable under this factor, that is, by acting as a substitute for it ("supersed[ing] [its] objects"). See Leval 1125; Patry & Perlmutter 692, 697–698. This is so because the parody and the original usually serve different market functions. Bisceglia, ASCAP, Copyright Law Symposium, No. 34, at 23.

We do not, of course, suggest that a parody may not harm the market at all, but when a lethal parody, like a scathing theater review, kills demand for the original, it does not produce a harm cognizable under the Copyright Act. Because "parody may quite legitimately aim at garroting the original, destroying it commercially as well as artistically," B. Kaplan, An Unhurried View of Copyright 69 (1967), the role of the courts is to distinguish between "[b]iting criticism [that merely] suppresses demand [and] copyright infringement[, which] usurps it." *Fisher* v. *Dees,* 794 F. 2d, at 438.

This distinction between potentially remediable displacement and unremediable disparagement is reflected in the rule that there is no protectible derivative market for criticism. The market for potential derivative uses includes only those that creators of original works would in general develop or license others to develop. Yet the unlikelihood that creators of imaginative works will license critical reviews or lampoons of their own productions removes such uses from the very notion of a potential licensing market. "People ask . . . for criticism, but they only want praise." S. Maugham, Of Human Bondage 241 (Penguin ed. 1992). Thus, to the extent that the opinion below may be read to have considered harm to the market for parodies of "Oh, Pretty Woman," see 972 F. 2d, at 1439, the court erred. Accord, *Fisher* v. *Dees, supra,* at 437; Leval 1125; Patry & Perlmutter 688–691.[22]

In explaining why the law recognizes no derivative market for critical works, including parody, we have, of course, been speaking of the later work as if it had nothing but a critical aspect (*i. e.,* "parody pure and simple," *supra,* at 591). But the later work may have a more complex character, with effects not only in the arena of criticism but also in protectible markets for derivative works, too. In that sort of case, the law looks beyond the criticism to the other elements of the work, as it does here. 2 Live Crew's song comprises not only parody but also rap music, and the derivative market for rap music is a proper focus of enquiry, see *Harper & Row, supra,* at 568; Nimmer § 13.05[B]. Evidence of substantial harm to it would weigh against a finding of fair use,[23] because the licensing of derivatives is an important economic incentive to the creation of originals. See 17 U. S. C. § 106(2) (copyright owner has rights to derivative works). Of course, the only harm to derivatives that need concern us, as discussed above, is the harm of market substitution. The fact that a parody may impair the market for derivative uses by the very effectiveness of its critical commentary is no more relevant under copyright than the like threat to the original market.[24]

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[22] We express no opinion as to the derivative markets for works using elements of an original as vehicles for satire or amusement, making no comment on the original or criticism of it.

Although 2 Live Crew submitted uncontroverted affidavits on the question of market harm to the original, neither they, nor Acuff-Rose, introduced evidence or affidavits addressing the likely effect of 2 Live Crew's parodic rap song on the market for a nonparody, rap version of "Oh, Pretty Woman." And while Acuff-Rose would have us find evidence of a rap market in the very facts that 2 Live Crew recorded a rap parody of "Oh, Pretty Woman" and another rap group sought a license to record a rap derivative, there was no evidence that a potential rap market was harmed in any way by 2 Live Crew's parody, rap version. The fact that 2 Live Crew's parody sold as part of a collection of rap songs says very little about the parody's effect on a market for a rap version of the original, either of the music alone or of the music with its lyrics. The District Court essentially passed on this issue, observing that Acuff-Rose is free to record "whatever version of the original it desires," 754 F. Supp., at 1158; the Court of Appeals went the other way by erroneous presumption. Contrary to each treatment, it is impossible to deal with the fourth factor except by recognizing that a silent record on an important factor bearing on fair use disentitled the proponent of the defense, 2 Live Crew, to summary judgment. The evidentiary hole will doubtless be plugged on remand.

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[23] See Nimmer § 13.05[A][4], p. 13–102.61 ("a substantially adverse impact on the potential market"); Leval 1125 ("reasonably substantial" harm); Patry & Perlmutter 697–698 (same).

[24] In some cases it may be difficult to determine whence the harm flows. In such cases, the other fair use factors may provide some indicia of the likely source of the harm. A work whose overriding purpose and character is parodic and whose borrowing is slight in relation to its parody will be far less likely to cause cognizable harm than a work with little parodic content and much copying.

III

It was error for the Court of Appeals to conclude that the commercial nature of 2 Live Crew's parody of "Oh, Pretty Woman" rendered it presumptively unfair. No such evidentiary presumption is available to address either the first factor, the character and purpose of the use, or the fourth, market harm, in determining whether a transformative use, such as parody, is a fair one. The court also erred in holding that 2 Live Crew had necessarily copied excessively from the Orbison original, considering the parodic purpose of the use. We therefore reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX A TO OPINION OF THE COURT

"Oh, Pretty Woman" by Roy Orbison and William Dees

Pretty Woman, walking down the street,
Pretty Woman, the kind I like to meet,
Pretty Woman, I don't believe you,
  you're not the truth,
No one could look as good as you
Mercy

Pretty Woman, won't you pardon me,
Pretty Woman, I couldn't help but see,

Pretty Woman, that you look lovely as can be
Are you lonely just like me?

Pretty Woman, stop a while,
Pretty Woman, talk a while,
Pretty Woman give your smile to me
Pretty Woman, yeah, yeah, yeah
Pretty Woman, look my way,
Pretty Woman, say you'll stay with me
'Cause I need you, I'll treat you right
Come to me baby, Be mine tonight

Pretty Woman, don't walk on by,
Pretty Woman, don't make me cry,
Pretty Woman, don't walk away,
Hey, O. K.
If that's the way it must be, O. K.
I guess I'll go on home, it's late
There'll be tomorrow night, but wait!

What do I see
Is she walking back to me?
Yeah, she's walking back to me!
Oh, Pretty Woman.

APPENDIX B TO OPINION OF THE COURT

"Pretty Woman" as Recorded by 2 Live Crew

Pretty woman walkin' down the street
Pretty woman girl you look so sweet
Pretty woman you bring me down to that knee
Pretty woman you make me wanna beg please
Oh, pretty woman

Big hairy woman you need to shave that stuff
Big hairy woman you know I bet it's tough
Big hairy woman all that hair it ain't legit

'Cause you look like 'Cousin It'
Big hairy woman

Bald headed woman girl your hair won't grow
Bald headed woman you got a teeny weeny afro
Bald headed woman you know your hair could look nice
Bald headed woman first you got to roll it with rice
Bald headed woman here, let me get this hunk of biz for ya
Ya know what I'm saying you look better than rice a roni
Oh bald headed woman

Big hairy woman come on in
And don't forget your bald headed friend
Hey pretty woman let the boys
Jump in

Two timin' woman girl you know you ain't right
Two timin' woman you's out with my boy last night
Two timin' woman that takes a load off my mind
Two timin' woman now I know the baby ain't mine
Oh, two timin' woman
Oh pretty woman

JUSTICE KENNEDY, concurring.

I agree that remand is appropriate and join the opinion of the Court, with these further observations about the fair use analysis of parody.

The common-law method instated by the fair use provision of the copyright statute, 17 U. S. C. § 107 (1988 ed. and Supp. IV), presumes that rules will emerge from the course of decisions. I agree that certain general principles are now discernible to define the fair use exception for parody. One of these rules, as the Court observes, is that parody may qualify as fair use regardless of whether it is published or performed for profit. *Ante,* at 591. Another is that parody may qualify as fair use only if it draws upon the original composition to make humorous or ironic commentary about that same composition. *Ante,* at 580. It is not enough that the parody use the original in a humorous fashion, however creative that humor may be. The parody must target the original, and not just its general style, the genre of art to which it belongs, or society as a whole (although if it targets the original, it may target those features as well). See *Rogers* v. *Koons,* 960 F. 2d 301, 310 (CA2 1992) ("[T]hough the satire need not be only of the copied work and may . . . also be a parody of modern society, the copied work must be, at least in part, an object of the parody"); *Fisher* v. *Dees,* 794 F. 2d 432, 436 (CA9 1986) ("[A] humorous or satiric work deserves protection under the fair-use doctrine only if the copied work is at least partly the target of the work in question"). This prerequisite confines fair use protection to works whose very subject is the original composition and so necessitates some borrowing from it. See *MCA, Inc.* v. *Wilson,* 677 F. 2d 180, 185 (CA2 1981) ("[I]f the copyrighted song is not at least in part an object of the parody, there is no need to conjure it up"); Bisceglia, Parody and Copyright Protection: Turning the Balancing Act Into a Juggling Act, in ASCAP, Copyright Law Symposium, No. 34, pp. 23–29 (1987). It also protects works we have reason to fear will not be licensed by copyright holders who wish to shield their works from criticism. See *Fisher, supra,* at 437 ("Self-esteem is seldom strong enough to permit the granting of permission even in exchange for a reasonable fee"); Posner, When Is Parody Fair Use?, 21 J. Legal Studies 67, 73 (1992) ("There is an obstruction when the parodied work is a target of the parodist's criticism, for it may be in the private interest of the copyright owner, but not in the social interest, to suppress criticism of the work") (emphasis deleted).

If we keep the definition of parody within these limits, we have gone most of the way towards satisfying the four-factor fair use test in § 107. The first factor (the purpose and character of use) itself concerns the definition of parody. The second factor (the nature of the copyrighted work) adds little to the first, since "parodies almost invariably copy publicly known, expressive works." *Ante*, at 586. The third factor (the amount and substantiality of the portion used in relation to the whole) is likewise subsumed within the definition of parody. In determining whether an alleged parody has taken too much, the target of the parody is what gives content to the inquiry. Some parodies, by their nature, require substantial copying. See *Elsmere Music, Inc.* v. *National Broadcasting Co.*, 623 F. 2d 252 (CA2 1980) (holding that "I Love Sodom" skit on "Saturday Night Live" is legitimate parody of the "I Love New York" campaign). Other parodies, like Lewis Carroll's "You Are Old, Father William," need only take parts of the original composition. The third factor does reinforce the principle that courts should not accord fair use protection to profiteers who do no more than add a few silly words to someone else's song or place the characters from a familiar work in novel or eccentric poses. See, *e. g., Walt Disney Productions* v. *Air Pirates*, 581 F. 2d 751 (CA9 1978); *DC Comics Inc.* v. *Unlimited Monkey Business, Inc.*, 598 F. Supp. 110 (ND Ga. 1984). But, as I believe the Court acknowledges, *ante*, at 588–589, it is by no means a test of mechanical application. In my view, it serves in effect to ensure compliance with the targeting requirement.

As to the fourth factor (the effect of the use on the market for the original), the Court acknowledges that it is legitimate for parody to suppress demand for the original by its critical effect. *Ante*, at 591–592. What it may not do is usurp demand by its substitutive effect. *Ibid.* It will be difficult, of course, for courts to determine whether harm to the market results from a parody's critical or substitutive effects. But again, if we keep the definition of parody within appropriate bounds, this inquiry may be of little significance. If a work targets another for humorous or ironic effect, it is by definition a new creative work. Creative works can compete with other creative works for the same market, even if their appeal is overlapping. Factor four thus underscores the importance of ensuring that the parody is in fact an independent creative work, which is why the parody must "make some critical comment or statement about the original work which reflects the original perspective of the parodist—thereby giving the parody social value beyond its entertainment function." *Metro-Goldwyn-Mayer, Inc.* v. *Showcase Atlanta Cooperative Productions, Inc.*, 479 F. Supp. 351, 357 (ND Ga. 1979).

The fair use factors thus reinforce the importance of keeping the definition of parody within proper limits. More than arguable parodic content should be required to deem a would-be parody a fair use. Fair use is an affirmative defense, so doubts about whether a given use is fair should not be resolved in favor of the self-proclaimed parodist. We should not make it easy for musicians to exploit existing works and then later claim that their rendition was a valuable commentary on the original. Almost any revamped modern version of a familiar composition can be construed as a "comment on the naiveté of the original," *ante*, at 583, because of the difference in style and because it will be amusing to hear how the old tune sounds in the new genre. Just the thought of a rap version of Beethoven's Fifth Symphony or "Achy Breaky Heart" is bound to make people smile. If we allow any weak transformation to qualify as parody, however, we weaken the protection of copyright. And underprotection of copyright disserves the goals of copyright just as much as overprotection, by reducing the financial incentive to create.

The Court decides it is "fair to say that 2 Live Crew's song reasonably could be perceived as commenting on the original or criticizing it, to some degree." *Ibid.* (applying the first fair use factor). While I am not so assured that 2 Live Crew's song is a legitimate parody, the Court's treatment of the remaining factors leaves room for the District Court to determine on remand that the song is not a fair use. As future courts apply our fair use analysis, they must take care to ensure that not just any commercial takeoff is rationalized *post hoc* as a parody.

With these observations, I join the opinion of the Court.

REPORTER'S NOTE

The next page is purposely numbered 801. The numbers between 600 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 4, 1993, THROUGH MARCH 21, 1994

OCTOBER 4, 1993

Appeal Dismissed

No. 93–208. IDAHO HISPANIC CAUCUS, INC., ET AL. *v.* IDAHO ET AL. Appeal from D. C. Idaho dismissed for want of jurisdiction.

Certiorari Granted—Vacated and Remanded

No. 92–1596. LIBERTY MORTGAGE CO. *v.* FREY ET AL. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Nobelman* v. *American Savings Bank,* 508 U. S. 324 (1993). Reported below: 982 F. 2d 529.

No. 92–1826. TEXAS *v.* PARRISH. Ct. Crim. App. Tex. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Dixon,* 509 U. S. 688 (1993). Reported below: 872 S. W. 2d 224.

No. 92–1968. BODIE *v.* CITY OF HUNTSVILLE ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U. S. 163 (1993). Reported below: 987 F. 2d 774.

No. 92–8022. SAFFEELS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Stinson* v. *United States,* 508 U. S. 36 (1993). Reported below: 982 F. 2d 1199.

No. 92–8439. RINCON *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.,* 509 U. S. 579 (1993). Reported below: 984 F. 2d 1003.

No. 92–8613. EVANS *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Stinson* v. *United States,* 508 U. S. 36 (1993). Reported below: 985 F. 2d 579.

No. 92–8964. McGinley *v.* United States. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed August 6, 1993. Reported below: 988 F. 2d 124.

No. 92–9129. Mines *v.* Texas. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *Texas,* 509 U. S. 350 (1993). Reported below: 852 S. W. 2d 941.

No. 93–34. Glover *v.* McDonnell Douglas Corp. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hazen Paper Co.* v. *Biggins,* 507 U. S. 604 (1993). Justice O'Connor took no part in the consideration or decision of this case. Reported below: 981 F. 2d 388.

Miscellaneous Orders

No. ———. Calpin *v.* United States;

No. ———. Clark *v.* United States;

No. ———. Germano et ux. *v.* First National Bank of Bethany et al.;

No. ———. Stapleton *v.* United States;

No. ———. Bass *v.* Commissioner of Internal Revenue;

No. ———. Omara *v.* International Service System, Inc., et al.;

No. ———. First Interstate Bank of California *v.* Merrill Lynch, Pierce, Fenner & Smith, Inc.;

No. ———. Perry *v.* Dietz;

No. ———. Gower *v.* Bailey et al.;

No. ———. Chabot et ux. *v.* City National Bank;

No. ———. LaRouche et al. *v.* Kezer, Secretary of State of Connecticut; and

No. ———. HSEIEH ET AL. *v.* THOMPSON ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. ———. RILEY *v.* DOW CORNING CORP. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of the Court for consideration with the motion to direct the Clerk to file petition for writ of certiorari out of time.

JUSTICE STEVENS, dissenting.

Because the Court consistently denies motions to direct the Clerk to file petitions for writs of certiorari out of time, I would take that action without reaching the merits of the motion to proceed *in forma pauperis.* Cf. *Brown* v. *Herald Co.*, 464 U. S. 928, 931 (1983) (STEVENS, J., dissenting).

No. ———. UNITED KEETOOWAH BAND *v.* OKLAHOMA TAX COMMISSION. Motion of petitioner to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. ———. DELK *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
No. ———. JOHNSON *v.* ILLINOIS; and
No. ———. JERMYN *v.* PENNSYLVANIA. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners granted.

No. ———. BABY BOY J. *v.* JOHNSON. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Motion for appointment of counsel denied. Motion for reimbursement of expenses denied.

No. A–128 (121, Orig.). LOUISIANA *v.* MISSISSIPPI ET AL. Application of Louisiana for stay of proceedings in the United States District Court for the Southern District of Mississippi, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. A–190. CASTRO ET AL. *v.* TOFOYA, JUDGE, ET AL. Sup. Ct. Ariz. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. A–252 (93–405). Digital Equipment Corp. *v.* Desktop Direct, Inc. C. A. 10th Cir. Application for stay of the effect of the order of the United States District Court for the District of Utah, case No. 92–C–178G, issued January 5, 1993, presented to Justice Thomas, and by him referred to the Court, granted pending the disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

No. A–296. Powell *v.* United States. Application for release on bail pending appeal, presented to Justice O'Connor, and by her referred to the Court, denied.

No. D–1259. In re Disbarment of Brown. Disbarment entered. [For earlier order herein, see 508 U. S. 903.]

No. D–1261. In re Disbarment of DeLorenzo. Disbarment entered. [For earlier order herein, see 508 U. S. 904.]

No. D–1267. In re Disbarment of Manger. Disbarment entered. [For earlier order herein, see 508 U. S. 936.]

No. D–1268. In re Disbarment of Dunford. It having been reported to the Court that Sam B. Dunford, of Palm Springs, Cal., has died, the rule to show cause, heretofore issued on May 24, 1993 [508 U. S. 936], is hereby discharged.

No. D–1269. In re Disbarment of Becker. Virgil Victor Becker, of Atascadero, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on May 24, 1993 [508 U. S. 936], is hereby discharged.

No. D–1273. In re Disbarment of Goldsborough. Disbarment entered. [For earlier order herein, see 508 U. S. 970.]

No. D–1278. In re Disbarment of Rapp. Disbarment entered. [For earlier order herein, see 509 U. S. 936.]

No. D–1281. In re Disbarment of Bear. F. James Bear, of National City, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on July 22, 1993 [509 U. S. 936], is hereby discharged.

No. D–1288. In re Disbarment of Correa. Dennis D. Correa, of St. Petersburg, Fla., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on July 22, 1993 [509 U. S. 937], is hereby discharged.

No. 65, Orig. Texas *v.* New Mexico. Motion of the River Master for fees and expenses granted, and the River Master is awarded $6,496.59 for the period April 1 through June 30, 1993, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 508 U. S. 937.]

No. 111, Orig. Delaware et al. *v.* New York. Motion of Delaware to strike the amended complaints in intervention denied. Amended complaints in intervention and answers of New York are referred to the Special Master. Counterclaims of New York are stricken without prejudice to move for leave to file such counterclaims in this Court. Should such leave be sought and responses filed with this Court, the motion and responses will be referred to the Special Master. [For earlier decision herein, see, *e. g.*, 507 U. S. 490.]

No. 120, Orig. New Jersey *v.* New York. Motion of New York for leave to file a surreply brief denied. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 92–989. Tennessee *v.* Middlebrooks; and Tennessee *v.* Evans. Sup. Ct. Tenn. [Certiorari granted, 507 U. S. 1028.] Motion of respondent Donald Ray Middlebrooks to dismiss the writ for lack of jurisdiction denied.

No. 92–1392. Shalala, Secretary of Health and Human Services *v.* Schoolcraft et al.; and

No. 92–1395. Roers, Director of Minnesota Disability Determination Services, et al. *v.* Schoolcraft et al. C. A. 8th Cir. Motion of the parties to defer consideration of petitions for writs of certiorari granted.

No. 92–1500. CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. *v.* BOHLEN. C. A. 8th Cir. [Certiorari granted, 508 U. S. 971.] Motion for appointment of counsel granted, and it is ordered that Richard H. Sindel, Esq., of Clayton, Mo., be appointed to serve as counsel for respondent in this case.

No. 92–1662. UNITED STATES *v.* GRANDERSON. C. A. 11th Cir. [Certiorari granted, 509 U. S. 921.] Motion for appointment of counsel granted, and it is ordered that Gregory S. Smith, Esq., of Atlanta, Ga., be appointed to serve as counsel for respondent in this case.

No. 92–1831. NORTHERN KENTUCKY WELFARE RIGHTS ASSN. ET AL. *v.* JONES, GOVERNOR OF KENTUCKY. C. A. 6th Cir.;

No. 92–1920. LIVADAS *v.* AUBRY, CALIFORNIA LABOR COMMISSIONER. C. A. 9th Cir.; and

No. 93–201. ALLEN & CO. INC. *v.* PACIFIC DUNLOP HOLDINGS INC. C. A. 7th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 92–1839. COLGATE-PALMOLIVE CO. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Ct. App. Cal., 3d App. Dist. Motions of Committee on State Taxation et al. and Tax Executives Institute, Inc., for leave to file briefs as *amici curiae* granted.

No. 92–2038. ASGROW SEED CO. *v.* WINTERBOER ET AL., DBA DEEBEES. C. A. Fed. Cir. Motions of American Seed Trade Association, Intellectual Property Owners, and American Intellectual Property Law Association for leave to file briefs as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 92–2058. HAWAIIAN AIRLINES, INC. *v.* NORRIS; and FINAZZO ET AL. *v.* NORRIS. Sup. Ct. Haw. Motion of Air Transport Association of America for leave to file a brief as *amicus curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 92–6259. ADAMS *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., 508 U. S. 974. Respondents are requested to file a response to petition for rehearing within 30 days.

No. 92–8579. ELDER *v.* HOLLOWAY ET AL. C. A. 9th Cir. [Certiorari granted, 509 U. S. 921.] Motion for appointment of counsel granted, and it is ordered that John C. Lynn, Esq., of Boise, Idaho, be appointed to serve as counsel for petitioner in this case.

No. 92-8873. Gilbertson *v.* Walker et al. Dist. Ct. App. Fla., 4th Dist.;

No. 92-9006. Smith *v.* Storm et al. C. A. 11th Cir.;

No. 92-9146. Vaksman *v.* University of Houston Board of Trustees et al. C. A. 5th Cir.;

No. 93-5017. Gilmore *v.* United States Postal Service. C. A. Fed. Cir.;

No. 93-5096. Mullins *v.* United States. C. A. 9th Cir.;

No. 93-5212. O'Connor *v.* Chicago Transit Authority et al. C. A. 7th Cir.;

No. 93-5299. Kendall *v.* Kendall. Ct. App. Wash.; and

No. 93-5301. Gregor *v.* Newport Inn Joint Venture et al. C. A. 1st Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

Justice Stevens, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petitions for writs of certiorari without reaching the merits of the motions to proceed *in forma pauperis.*

No. 92-9014. In re Bauer. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. Justice Blackmun and Justice Stevens would deny the petition for writ of mandamus.

No. 92-9180. In re Miller. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. Justice Stevens would deny the petition for writ of habeas corpus.

No. 93–19. TENNESSEE *v.* BANE; and TENNESSEE *v.* SMITH. Sup. Ct. Tenn. Motion of respondent John Michael Bane for leave to proceed *in forma pauperis* granted.

No. 93–5204. IN RE ROUTT. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petition for writ of habeas corpus without reaching the merits of the motion to proceed *in forma pauperis.*

No. 93–5417. SCHMIDT *v.* UTAH ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. JUSTICE STEVENS would deny the petition for writ of certiorari.

No. 93–5420. BRAYALL ET VIR *v.* DART INDUSTRIES ET AL. C. A. 1st Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

JUSTICE BLACKMUN and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis.*

No. 93–5622. JONES *v.* JACKSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 25, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. JUSTICE STEVENS would deny the petition for writ of certiorari. JUSTICE GINSBURG took no part in the consideration or decision of this motion.

No. 92–8954. IN RE DANN;
No. 92–8982. IN RE HENTHORN;
No. 93–5206. IN RE MORROW;
No. 93–5594. IN RE ANDERSON;
No. 93–5604. IN RE DIAZ-BATISTA; and
No. 93–5632. IN RE LOHR. Petitions for writs of habeas corpus denied.

No. 92–8986. IN RE YOUNG;
No. 92–8987. IN RE WIRS;
No. 92–9112. IN RE WEBBER;
No. 92–9118. IN RE WEBBER;
No. 92–9179. IN RE NKOP;
No. 93–3. IN RE SCHMIDT;
No. 93–5313. IN RE MEADE;
No. 93–5369. IN RE HENTHORN; and
No. 93–5636. IN RE COOPER ET UX. Petitions for writs of mandamus denied.

No. 92–2035. IN RE LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. Motion of respondent Jimmie Wayne Jeffers for leave to proceed *in forma pauperis* granted. Petition for writ of mandamus denied.

No. 93–176. IN RE WHITE;
No. 93–183. IN RE PARKER;
No. 93–235. IN RE HODGE; and
No. 93–5078. IN RE STEEL. Petitions for writs of mandamus and/or prohibition denied.

No. 93–5022. IN RE SPITERI. Petition for writ of prohibition denied.

Certiorari Granted

No. 92–1856. CITY OF LADUE ET AL. *v.* GILLEO. C. A. 8th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 986 F. 2d 1180.

No. 92–1911. PUD No. 1 of Jefferson County et al. *v.* Washington Department of Ecology et al. Sup. Ct. Wash. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 121 Wash. 2d 179, 849 P. 2d 646.

No. 92–1941. United States *v.* Carlton. C. A. 9th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 972 F. 2d 1051.

No. 92–1964. National Labor Relations Board *v.* Health Care & Retirement Corporation of America. C. A. 6th Cir. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 987 F. 2d 1256.

No. 92–1988. Ticor Title Insurance Co. et al. *v.* Brown et al. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 982 F. 2d 386.

No. 93–141. West Lynn Creamery, Inc., et al. *v.* Watson, Commissioner of Massachusetts Department of Food and Agriculture. Sup. Jud. Ct. Mass. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 415 Mass. 8, 611 N. E. 2d 239.

No. 92–7247. Farmer *v.* Brennan, Warden, et al. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply.

No. 92–8841. Powell *v.* Nevada. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 108 Nev. 700, 838 P. 2d 921.

No. 92–9059. Simmons *v.* South Carolina. Sup. Ct. S. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, November 16, 1993. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, December 14, 1993. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 5, 1994. This Court's Rule 29 does not apply. Reported below: 310 S. C. 439, 427 S. E. 2d 175.

Certiorari Denied

No. 92–1511. GRYNBERG ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 367.

No. 92–1591. JOHNSON *v.* CARTER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 983 F. 2d 1316.

No. 92–1609. ORLEBECK *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 611 So. 2d 534.

No. 92–1688. DOE, A MINOR, BY HIS FATHER AND NEXT FRIEND, DOE, ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 976 F. 2d 1071.

No. 92–1690. BALISTRIERI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 981 F. 2d 916.

No. 92–1691. CONSOLIDATION COAL CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 986 F. 2d 1408.

No. 92–1697. DODGE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 981 F. 2d 350.

No. 92–1699. JUSTICE ET AL. *v.* SUITS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 979 F. 2d 853.

No. 92–1703. NEWMAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 982 F. 2d 665.

No. 92–1710. WOHLFARTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 554.

No. 92–1715. MARILAO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 986 F. 2d 1410.

No. 92–1726. Enron Oil & Gas Co. *v.* Babbitt, Secretary of the Interior, et al. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 212.

No. 92–1727. Madera Irrigation District *v.* Hancock et al. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 1397.

No. 92–1734. Noell, Co-Executor of Estate of Noell, Deceased *v.* Federal Deposit Insurance Corporation, as Corporate Receiver for Northway National Bank of Plano, Texas. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 231.

No. 92–1741. Alpine Land & Reservoir Co. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 984 F. 2d 1047.

No. 92–1743. Bougere *v.* Ferrara. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 193.

No. 92–1762. Simmons *v.* Frankel et al. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1251.

No. 92–1767. White *v.* Cooney et ux. Sup. Ct. Wyo. Certiorari denied. Reported below: 845 P. 2d 353.

No. 92–1772. Broughton Lumber Co. *v.* Columbia River Gorge Commission. C. A. 9th Cir. Certiorari denied. Reported below: 975 F. 2d 616.

No. 92–1784. Arkansas-Platte & Gulf Partnership *v.* Dow Chemical Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 981 F. 2d 1177.

No. 92–1788. Reeder *v.* Runyon, Postmaster General. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1428.

No. 92–1789. Employers Insurance of Wausau et al. *v.* Occidental Petroleum Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 1422.

No. 92–1790. Consolidated Rail Corporation *v.* Stowers. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 292.

No. 92–1791. Humphreys *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 254.

No. 92–1794. Keaulii *v.* Simpson. Sup. Ct. Haw. Certiorari denied. Reported below: 74 Haw. 417, 847 P. 2d 663.

No. 92–1795. Rattenni et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1250.

No. 92–1797. Nadeau *v.* Budlong. App. Ct. Conn. Certiorari denied. Reported below: 30 Conn. App. 61, 619 A. 2d 4.

No. 92–1803. California State Board of Equalization *v.* McDonnell Douglas Corp. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 10 Cal. App. 4th 1413, 13 Cal. Rptr. 2d 399.

No. 92–1804. Barcal *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 979 F. 2d 469.

No. 92–1807. Global Divers & Contractors, Inc. *v.* Leevac Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1062.

No. 92–1808. Whitmer et ux. *v.* John Hancock Mutual Life Insurance Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 2d 1074.

No. 92–1813. FHP, Inc. *v.* Solorzano et al. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 10 Cal. App. 4th 1135, 13 Cal. Rptr. 2d 161.

No. 92–1814. Hill *v.* Pitt-Ohio Express, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 972 F. 2d 340.

No. 92–1817. Miles, Inc. *v.* Sondergard. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 1389.

No. 92–1818. Nichols et vir *v.* Tubb et al. Sup. Ct. Miss. Certiorari denied. Reported below: 609 So. 2d 377.

No. 92–1819. Edmonds, a Minor, by James, Mother and Natural Guardian, et al. *v.* Western Pennsylvania Hospital et al. Super. Ct. Pa. Certiorari denied. Reported below: 414 Pa. Super. 567, 607 A. 2d 1083.

No. 92–1820. Grynberg *v.* City of Northglenn, Colorado. Sup. Ct. Colo. Certiorari denied. Reported below: 846 P. 2d 175.

No. 92–1821. Koerner *v.* International Coffee Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 231.

No. 92–1824. MAPCO Petroleum, Inc. *v.* Memphis Barge Line, Inc. Sup. Ct. Tenn. Certiorari denied. Reported below: 849 S. W. 2d 312.

No. 92–1825. Peterson *v.* Rauscher Pierce Refsnes, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1209.

No. 92–1827. Bona *v.* Chavez et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 611 So. 2d 523.

No. 92–1828. C. J. Langenfelder & Son, Inc. *v.* Dana Marine Service, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 231.

No. 92–1829. Lindy Pen Co., Inc., et al. *v.* Bic Pen Corp. C. A. 9th Cir. Certiorari denied. Reported below: 982 F. 2d 1400.

No. 92–1830. Spickler *v.* Key Bank of Southern Maine et al. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 618 A. 2d 204.

No. 92–1833. In re Larsen. Sup. Ct. Pa. Certiorari denied. Reported below: 532 Pa. 326, 616 A. 2d 529.

No. 92–1834. Bradley *v.* Ohio. Ct. App. Ohio, Ross County. Certiorari denied.

No. 92–1835. Woods *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 414 Mass. 343, 607 N. E. 2d 1024.

No. 92–1836. Pree *v.* Brunswick Corp. C. A. 8th Cir. Certiorari denied. Reported below: 983 F. 2d 863.

No. 92–1838. Brown *v.* Bentsen, Secretary of the Treasury. C. A. 9th Cir. Certiorari denied. Reported below: 979 F. 2d 854.

No. 92–1842. Doe *v.* Entergy Services, Inc. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 608 So. 2d 684.

No. 92–1843. Poston *v.* Poston. Sup. Ct. Vt. Certiorari denied. Reported below: 160 Vt. 1, 624 A. 2d 853.

No. 92–1844. Louisiana *v.* Abadie. Sup. Ct. La. Certiorari denied. Reported below: 612 So. 2d 1.

No. 92–1845. Medina *v.* Anthem Life Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 29.

No. 92–1846. Levin, Executor, Estate of Levin Prince, Deceased *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 91.

No. 92–1847. Preece *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 844 S. W. 2d 385.

No. 92–1848. Whitworth Brothers Storage Co. *v.* Central States, Southeast and Southwest Areas Pension Fund et al.; and
No. 92–2014. Central States, Southeast and Southwest Areas Pension Fund et al. *v.* Whitworth Brothers Storage Co. C. A. 6th Cir. Certiorari denied. Reported below: 982 F. 2d 1006.

No. 92–1849. Lunder *v.* City of Los Angeles et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–1850. Childs *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 614 So. 2d 1064.

No. 92–1851. Dailey et al. *v.* National Hockey League et al. C. A. 3d Cir. Certiorari denied. Reported below: 987 F. 2d 172.

No. 92–1852. Sanders *v.* Samaniego, Sheriff, El Paso County, Texas. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92–1854. Poole, Administratrix of the Estate of Poole *v.* Consolidated Rail Corporation. Ct. App. N. Y. Certiorari denied. Reported below: 80 N. Y. 2d 184, 604 N. E. 2d 63.

No. 92–1855. Miloslavsky et al. *v.* AES Engineering Society, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1534.

No. 92–1857. Royal Food Products, Inc. *v.* Buckeye Union Insurance Co. et al. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 561.

No. 92–1860. Douglas et al. *v.* Federal Deposit Insurance Corporation et al. C. A. 5th Cir. Certiorari denied. Reported below: 979 F. 2d 1128.

No. 92–1863. Aliota et ux. *v.* Graham et al. C. A. 3d Cir. Certiorari denied. Reported below: 984 F. 2d 1350.

No. 92–1864. Akridge et al. *v.* AMBAC Indemnity Corp. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 773, 425 S. E. 2d 637.

No. 92–1865. DeLeonardis *v.* Koch, Special Counsel, Office of the Special Counsel. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 725.

No. 92–1866. Goodwin *v.* Department of the Treasury. C. A. Fed. Cir. Certiorari denied. Reported below: 983 F. 2d 226.

No. 92–1867. Butts et al. *v.* Moutray. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 426.

No. 92–1868. Sea-Land Service, Inc. *v.* Tinsley et ux. C. A. 9th Cir. Certiorari denied. Reported below: 979 F. 2d 856 and 1382.

No. 92–1869. Bullwinkle *v.* Alaska. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 118.

No. 92–1870. Voinche *v.* United States Department of the Air Force. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 667.

No. 92–1871. Commonwealth Land Title Insurance Co. *v.* Corman Construction, Inc., et al. Sup. Ct. Va. Certiorari denied.

No. 92–1872. Facemire *v.* Duff et al. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 789.

No. 92–1873. LESLIE *v.* SCHOOL BOARD OF BROWARD COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 92–1874. SANDY RIVER NURSING CARE CENTER ET AL. *v.* AETNA CASUALTY & SURETY CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 985 F. 2d 1138.

No. 92–1877. HERNANDEZ *v.* DONLEY, ACTING SECRETARY OF THE AIR FORCE. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 770.

No. 92–1878. LIMA MEMORIAL HOSPITAL ET AL. *v.* MANION. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1036.

No. 92–1879. PLUMBERS LOCAL UNION NO. 94, AFL–CIO *v.* KOKOSING CONSTRUCTION CO. ET AL. Ct. App. Ohio, Stark County. Certiorari denied.

No. 92–1880. KELLY *v.* ELLIS ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 611 So. 2d 262.

No. 92–1881. THOMSEN *v.* JUVENILE DEPARTMENT OF WASHINGTON COUNTY ET AL. Ct. App. Ore. Certiorari denied. Reported below: 116 Ore. App. 248, 841 P. 2d 707.

No. 92–1883. CHASE MANHATTAN BANK, N. A. *v.* VILLA MARINA YACHT HARBOR, INC. C. A. 1st Cir. Certiorari denied. Reported below: 984 F. 2d 546.

No. 92–1884. NELSON *v.* CARLSON ET AL. Ct. App. Minn. Certiorari denied.

No. 92–1885. ALASKA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1259.

No. 92–1887. QUILLER *v.* MILES, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 769, 425 S. E. 2d 641.

No. 92–1888. CONSTRUCCIONES AERONAUTICAS, S. A. *v.* SHERER, ADMINISTRATRIX OF THE ESTATE OF SHERER, DECEASED. C. A. 6th Cir. Certiorari denied. Reported below: 987 F. 2d 1246.

No. 92–1889. Blue Cross & Blue Shield Mutual of Ohio *v.* Libbey-Owens-Ford Co., Administrator of the Group Health Insurance Plan. C. A. 6th Cir. Certiorari denied. Reported below: 982 F. 2d 1031.

No. 92–1890. Renton School District No. 403 et al. *v.* Garnett, By and Through His Next Friend, Smith, et al. C. A. 9th Cir. Certiorari denied. Reported below: 987 F. 2d 641.

No. 92–1891. Oot *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 92–1892. Harrison *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 775.

No. 92–1893. Principal Mutual Life Insurance Co. *v.* MCorp. C. A. 5th Cir. Certiorari denied.

No. 92–1894. North Florida Shipyards, Inc. *v.* Lykes Bros. Steamship Co., Inc. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 607 So. 2d 516.

No. 92–1895. Bank of Jackson County *v.* Cherry et al. C. A. 11th Cir. Certiorari denied. Reported below: 980 F. 2d 1362.

No. 92–1896. 767 Third Avenue Associates et al. *v.* Permanent Mission of the Republic of Zaire to the United Nations. C. A. 2d Cir. Certiorari denied. Reported below: 988 F. 2d 295.

No. 92–1898. Johnson *v.* Crown Life Insurance Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 229.

No. 92–1899. Kokaras et al. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 980 F. 2d 20.

No. 92–1901. More et al. *v.* Farrier et al. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 2d 269.

No. 92–1902. Vienna Mortgage Corp. *v.* Federal Deposit Insurance Corporation, as Receiver for National Bank of Washington. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 553.

No. 92–1903. Agan *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 783, 426 S. E. 2d 552.

No. 92–1904. GUILLORY *v.* PORT OF HOUSTON AUTHORITY. Sup. Ct. Tex. Certiorari denied. Reported below: 845 S. W. 2d 812.

No. 92–1905. RESIDENT COUNCIL OF ALLEN PARKWAY VILLAGE ET AL. *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 980 F. 2d 1043.

No. 92–1906. HARDAWAY CO. *v.* UNITED STATES DEPARTMENT OF THE ARMY CORPS OF ENGINEERS. C. A. 11th Cir. Certiorari denied. Reported below: 980 F. 2d 1415.

No. 92–1907. HUNTINGTON BREAKERS APARTMENTS, LTD. *v.* C. W. DRIVER. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 92–1908. REDLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 983 F. 2d 893.

No. 92–1909. CROUCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 978 F. 2d 716.

No. 92–1910. LETTIERI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 2d 1443.

No. 92–1912. TUCKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 278.

No. 92–1913. OVERMYER *v.* BARR, TRUSTEE OF OVERMYER. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1251.

No. 92–1914. LOTTIER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 67 Wash. App. 1031.

No. 92–1915. YOUELL & COS. ET AL. *v.* GETTY OIL CO. ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 845 S. W. 2d 794.

No. 92–1916. FARLEY ET AL. *v.* COMMISSIONER, MAINE DEPARTMENT OF HUMAN SERVICES, ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 621 A. 2d 404.

No. 92–1917. BERTOLI *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 92–1918. HAMILTON ET AL. *v.* GROCERS SUPPLY CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 1441.

No. 92–1919. HOLLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 100.

No. 92–1921. AITSON *v.* CAMPBELL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 507.

No. 92–1922. TERRITORY OF GUAM *v.* TURNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1259.

No. 92–1924. CARTER ET AL. *v.* HONDA MOTOR CO., LTD., ET AL. C. A. 8th Cir. Certiorari denied.

No. 92–1926. MURRAY *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 225 Conn. 355, 623 A. 2d 60.

No. 92–1927. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 557.

No. 92–1928. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 978 F. 2d 1112.

No. 92–1929. CARTER ET AL. *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. 9th Cir. Certiorari denied. Reported below: 987 F. 2d 611.

No. 92–1930. GRIFFIN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 80 N. Y. 2d 723, 610 N. E. 2d 367.

No. 92–1931. GARELICK ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 987 F. 2d 913.

No. 92–1932. BESING ET AL. *v.* HAWTHORNE. C. A. 5th Cir. Certiorari denied. Reported below: 981 F. 2d 1488.

No. 92–1935. GERRISH *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 320.

No. 92–1936. YEAGER ET AL. *v.* CITY OF MCGREGOR, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 980 F. 2d 337.

No. 92–1937. MEDRANO *v.* EXCEL CORP. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 230.

No. 92–1939. REYTBLATT *v.* NUCLEAR REGULATORY COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 989 F. 2d 502.

No. 92–1940. MONTELEONE ET AL. *v.* MUNICIPAL COURT OF CALIFORNIA, NORTHERN SOLANO COUNTY JUDICIAL DISTRICT, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1258.

No. 92–1942. AMOCO PRODUCTION CO. *v.* VESTA INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 981.

No. 92–1943. GORDON *v.* LYONS. Ct. App. Okla. Certiorari denied.

No. 92–1944. FACCHIANO CONSTRUCTION CO., INC., ET AL. *v.* UNITED STATES DEPARTMENT OF LABOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 987 F. 2d 206.

No. 92–1946. WARD PETROLEUM CORP. ET AL. *v.* OKLAHOMA CORPORATION COMMISSION ET AL. Ct. App. Okla. Certiorari denied.

No. 92–1948. WALKER, TRUSTEE, MINRO OIL, INC. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 231.

No. 92–1950. PROYECT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 989 F. 2d 84.

No. 92–1951. JENNER *v.* SMITH, SUPERINTENDENT, SPRINGFIELD CORRECTIONAL FACILITY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 329.

No. 92–1952. READ *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 991 F. 2d 809.

No. 92–1953. RAYMOND ET AL. *v.* MOBIL OIL CORP. C. A. 10th Cir. Certiorari denied. Reported below: 983 F. 2d 1528.

No. 92–1954. MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 984 F. 2d 514.

No. 92–1955. BLOMQUIST ET AL. *v.* BIETER CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 987 F. 2d 1319.

No. 92–1957. GIPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 412.

No. 92–1958. DESARROLLOS METROPOLITANOS, INC. *v.* TABER PARTNERS I ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 987 F. 2d 57.

No. 92–1959. WORD OF FAITH WORLD OUTREACH CENTER CHURCH, INC., ET AL. *v.* MORALES, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 962.

No. 92–1962. BLAIS ET AL. *v.* BROUSSARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 92–1963. ANDHOGA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 771.

No. 92–1965. CAMOSCIO *v.* LAWTON, JUDGE. App. Ct. Mass. Certiorari denied.

No. 92–1966. ERRICO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 608 So. 2d 930.

No. 92–1967. SILVER CLOUD, INC., DBA COLUMBIANA PLASTICS, ET AL. *v.* NATIONAL KITCHEN PRODUCTS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92–1969. HARRISON *v.* BANKERS FIRST FEDERAL SAVINGS & LOAN ASSN. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 1539.

No. 92–1971. MOORE ET AL. *v.* ESPY, SECRETARY OF AGRICULTURE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 990 F. 2d 375.

No. 92–1972. FURMANSKI *v.* FURMANSKI. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–1973. POLYAK *v.* BOSTON ET AL.; and IN RE POLYAK. C. A. 11th Cir. Certiorari denied.

No. 92–1974. National Union Fire Insurance Company of Pittsburgh, Pennsylvania *v.* Helfand et ux. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 10 Cal. App. 4th 869, 13 Cal. Rptr. 2d 295.

No. 92–1975. Cannon et ux. *v.* LeFleur et al. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1064.

No. 92–1976. Ortiz *v.* Dieter et al. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 878.

No. 92–1977. Fisch et al. *v.* Randall Mill Corp. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 861, 426 S. E. 2d 883.

No. 92–1978. Reserve National Insurance Co. *v.* Crowell et ux. Sup. Ct. Ala. Certiorari denied. Reported below: 614 So. 2d 1005.

No. 92–1979. King *v.* Collagen Corp. C. A. 1st Cir. Certiorari denied. Reported below: 983 F. 2d 1130.

No. 92–1980. Ohio *v.* Rodriguez. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 1437, 608 N. E. 2d 1083.

No. 92–1981. Wiener, dba Chuck's Bookstore, et al. *v.* City of National City, California. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 4th 832, 838 P. 2d 223.

No. 92–1983. Steirer et al. *v.* Bethlehem Area School District et al. C. A. 3d Cir. Certiorari denied. Reported below: 987 F. 2d 989.

No. 92–1984. Pennsylvania Federation of the Brotherhood of Maintenance of Way Employes et al. *v.* National Railroad Passenger Corporation. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 112.

No. 92–1985. Herrera-Meras *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 575.

No. 92–1986. FilmTec Corp. *v.* Hydranautics. C. A. Fed. Cir. Certiorari denied. Reported below: 982 F. 2d 1546.

No. 92–1989. Stamps *v.* Collagen Corp. C. A. 5th Cir. Certiorari denied. Reported below: 984 F. 2d 1416.

No. 92–1990. Douglas *v.* Miller, Director, Michigan Department of Social Services, et al. C. A. 6th Cir. Certiorari denied. Reported below: 990 F. 2d 875.

No. 92–1991. Dean, Sheriff of Citrus County, Florida, et al. *v.* Redner. C. A. 11th Cir. Certiorari denied.

No. 92–1992. Harold Washington Party et al. *v.* Democratic Party of Cook County, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 875.

No. 92–1993. Beals *v.* City of Thatcher, Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1257.

No. 92–1994. Dunkin et al. *v.* Louisiana-Pacific Corp. et al. C. A. 10th Cir. Certiorari denied.

No. 92–1997. Carter *v.* Certified Grocers of California, Ltd. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1256.

No. 92–1998. Beyer et al. *v.* Cannon et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 92–1999. Harlow Fay, Inc. *v.* Federal Land Bank of St. Louis. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 1351.

No. 92–2000. Houck *v.* Stephens et al. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 487.

No. 92–2001. Safir *v.* CSX Corp. et al. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 492.

No. 92–2005. Gleason *v.* Ohio. Ct. App. Ohio, Summit County. Certiorari denied.

No. 92–2006. Ukiah Adventist Hospital et al. *v.* Federal Trade Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 981 F. 2d 543.

No. 92–2007. Roehl *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 977 F. 2d 375.

No. 92–2008. Hexamer *v.* Johnson Controls, Inc. C. A. 5th Cir. Certiorari denied.

No. 92-2009. MISSOURI *v.* ERWIN. Sup. Ct. Mo. Certiorari denied. Reported below: 848 S. W. 2d 476.

No. 92-2013. EZOLD *v.* WOLF, BLOCK, SCHORR & SOLIS-COHEN. C. A. 3d Cir. Certiorari denied. Reported below: 983 F. 2d 509.

No. 92-2015. BABER *v.* COMMISSION ON RETIREMENT, REMOVAL AND DISCIPLINE. Sup. Ct. Mo. Certiorari denied. Reported below: 847 S. W. 2d 800.

No. 92-2017. CLEARY *v.* ROBERT WASSERWALD, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92-2018. GO-VIDEO, INC. *v.* MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 977 F. 2d 588.

No. 92-2019. CONSOLIDATED CHEMICAL WORKS ET AL. *v.* MARCUS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 237 Ill. App. 3d 1108, 655 N. E. 2d 484.

No. 92-2020. MARSH, A MINOR BY AND THROUGH HIS GUARDIAN AD LITEM, MARSH *v.* ALLSTATE LIFE INSURANCE COMPANY OF NEW YORK. C. A. 9th Cir. Certiorari denied. Reported below: 953 F. 2d 1387.

No. 92-2021. BESING ET AL. *v.* HOME INSURANCE COMPANY OF INDIANA. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 92-2023. FELICIANO ET AL. *v.* CITY OF CLEVELAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 988 F. 2d 649.

No. 92-2024. FORT WAYNE EDUCATION ASSN., INC. *v.* FORT WAYNE COMMUNITY SCHOOLS ET AL.; and

No. 93-127. UNITED STATES POSTAL SERVICE *v.* FORT WAYNE EDUCATION ASSN., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 977 F. 2d 358.

No. 92-2026. VISTA PAINT CORP. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 976 F. 2d 739.

No. 92-2027. WOODS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 986 F. 2d 669.

No. 92-2028. PAGANUCCI ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 310.

No. 92–2029. ALVARADO *v.* COUNTY OF STANISLAUS ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 92–2030. GREGORY *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 317.

No. 92–2031. SIMS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 92–2033. CARPENTERS HEALTH AND WELFARE TRUST FUND FOR CALIFORNIA ET AL. *v.* DEVELOPERS INSURANCE CO. ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 11 Cal. App. 4th 1539, 15 Cal. Rptr. 2d 85.

No. 92–2034. CONARD ET AL. *v.* UNIVERSITY OF WASHINGTON ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 119 Wash. 2d 519, 834 P. 2d 17.

No. 92–2036. CAMPOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 986 F. 2d 35.

No. 92–2037. WOLFF ET AL. *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92–2039. WELLS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 124.

No. 92–2040. HERNANDEZ-OVIEDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 92–2041. SWAROVSKI INTERNATIONAL TRADING CORP., A. G., ET AL. *v.* EBELING & REUSS, LTD., T/A EBELING & REUSS CO. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 876.

No. 92–2042. ROBINSON *v.* CENTRAL BRASS MANUFACTURING CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 987 F. 2d 1235.

No. 92–2043. CHILDS, EXECUTRIX OF THE ESTATE OF CHILDS, DECEASED, ET AL. *v.* OKLAHOMA. Sup. Ct. Okla. Certiorari denied. Reported below: 848 P. 2d 571.

No. 92–2044. POZO-APARICIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 125.

No. 92–2046. Hunt, Governor of North Carolina, et al. *v.* Republican Party of North Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 980 F. 2d 943.

No. 92–2047. Valentine *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 2d 906.

No. 92–2048. Holloway et al. *v.* Browning et al.; and
No. 92–2049. Flojo Trading Corp. *v.* Browning et al. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 840 S. W. 2d 14.

No. 92–2050. Clark *v.* Clark, Executor of the Estate of Clark, et al. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 2d 272.

No. 92–2051. Lafferty et al. *v.* Rey. C. A. 1st Cir. Certiorari denied. Reported below: 990 F. 2d 1379.

No. 92–2052. Central Arizona Water Conservation District et al. *v.* Environmental Protection Agency et al. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1531.

No. 92–2053. Pinder *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 92–2054. Kellebrew *v.* Featherlite Precast Corp. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 92–2056. Hall *v.* Harlan et al. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 1255.

No. 92–2057. Rabbitt *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 92–2059. Gerritsen *v.* Consulado General de Mexico et al. C. A. 9th Cir. Certiorari denied. Reported below: 989 F. 2d 340.

No. 92–2060. Prayson et al. *v.* Kansas City Power & Light Co. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 847 S. W. 2d 852.

No. 92–2061. Scientific-Atlanta, Inc. *v.* Henderson et al. C. A. 11th Cir. Certiorari denied. Reported below: 971 F. 2d 1567.

No. 92–2062. F. P. Corp. *v.* Twin Modal, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 285.

No. 92–7727. Felder *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 848 S. W. 2d 85.

No. 92–7807. Flanagan *v.* Shively et al. C. A. 3d Cir. Certiorari denied. Reported below: 980 F. 2d 722.

No. 92–7916. Young *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied.

No. 92–7918. Oswald *v.* Metzmaker et al. C. A. 6th Cir. Certiorari denied.

No. 92–8020. Smith *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 981 F. 2d 1252.

No. 92–8086. Henderson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 1539.

No. 92–8099. Wilcher *v.* Hargett, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 872.

No. 92–8101. Williamson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 607 A. 2d 471.

No. 92–8129. Young *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 153 Ill. 2d 383, 607 N. E. 2d 123.

No. 92–8138. Taylor *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 981 F. 2d 1256.

No. 92–8174. Smith *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 977 F. 2d 951.

No. 92–8177. Beasley *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 980 F. 2d 731.

No. 92–8182. Abdullah *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 242 Neb. 712, 496 N. W. 2d 524.

No. 92–8187. Lattany *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 982 F. 2d 866.

No. 92–8190. LYNCH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 234 Ill. App. 3d 141, 599 N. E. 2d 1202.

No. 92–8240. PROWS *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 981 F. 2d 466.

No. 92–8257. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 983 F. 2d 1054.

No. 92–8265. MOORE *v.* HAM, CORRECTIONS CAPTAIN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1428.

No. 92–8279. BECKER *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 971 F. 2d 172.

No. 92–8285. CHRONOPOULOS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 171 Wis. 2d 349, 493 N. W. 2d 272.

No. 92–8288. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 1537.

No. 92–8306. HUBANKS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 173 Wis. 2d 1, 496 N. W. 2d 96.

No. 92–8335. HOPE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 92–8362. KADUNC *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 981 F. 2d 1251.

No. 92–8369. RODRIGUEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 609 So. 2d 493.

No. 92–8410. LEROY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 984 F. 2d 1095.

No. 92–8444. NELSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 848 So. 2d 126.

No. 92–8448. JENNINGS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92–8465. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 578.

No. 92–8468. WILLIAMS *v.* CLELAND, SECRETARY OF STATE OF GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 92–8474. MILLER-EL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92–8485. HUDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 982 F. 2d 160.

No. 92–8494. CABAL *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 980 F. 2d 734.

No. 92–8499. RODRIGUEZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 182 App. Div. 2d 439, 582 N. Y. S. 2d 166.

No. 92–8503. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 92–8506. ALLRIDGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 850 S. W. 2d 471.

No. 92–8507. WRIGHT *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 92–8523. SEPULVEDA AQUERRE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 983 F. 2d 1070.

No. 92–8550. COLLINS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 556.

No. 92–8554. WINSETT *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 153 Ill. 2d 335, 606 N. E. 2d 1186.

No. 92–8576. FLORES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 153 Ill. 2d 264, 606 N. E. 2d 1078.

No. 92–8578. ELLIOT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 985 F. 2d 901.

No. 92–8593. LIBED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 578.

No. 92–8594. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 506.

No. 92–8609. EVANS *v.* VALLES. C. A. 7th Cir. Certiorari denied. Reported below: 986 F. 2d 1424.

No. 92–8610. HOBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 2d 1198.

No. 92–8623. MCKINNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 554.

No. 92–8625. MOORE *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied.

No. 92–8626. LINDSAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 985 F. 2d 666.

No. 92–8629. STARNES *v.* KERBY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1429.

No. 92–8643. QURESHI *v.* ALEXANDRIA HOSPITAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 980 F. 2d 727.

No. 92–8658. SULLIVAN *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 489.

No. 92–8660. CRAWFORD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 92–8669. LONG *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 610 So. 2d 1268.

No. 92–8671. PRINGLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 320.

No. 92–8689. GRANGER *v.* GOODWIN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 237.

No. 92–8691. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 988 F. 2d 1459.

No. 92–8692. WORLEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 205 Ga. App. XXXI.

No. 92–8693. GARDNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 1539.

No. 92–8694. Gonzalez *v.* California. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 92–8697. Roller *v.* Tuggle. C. A. 11th Cir. Certiorari denied.

No. 92–8702. Jones *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 92–8708. Slagle *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 65 Ohio St. 3d 597, 605 N. E. 2d 916.

No. 92–8711. Braddy *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 92–8712. Marrero *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 506.

No. 92–8713. Nichols *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 977 F. 2d 972.

No. 92–8722. Kikuts *v.* Pandozy, Commissioner, Clinton County Department of Social Services. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 182 App. Div. 2d 996, 583 N. Y. S. 2d 525.

No. 92–8723. Stack *v.* Caspari, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 526.

No. 92–8728. Copeny *v.* Burton, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 92–8730. Lawrence *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 614 So. 2d 1092.

No. 92–8732. Brannon *v.* LaMaina. Sup. Ct. Del. Certiorari denied. Reported below: 622 A. 2d 1094.

No. 92–8733. Hunt *v.* Vasquez, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 119.

No. 92–8734. Helzer *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 441 Mich. 893, 495 N. W. 2d 385.

No. 92–8737. Chambers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 1263.

No. 92–8739. Gavin *v.* Dunn et al. C. A. 7th Cir. Certiorari denied. Reported below: 979 F. 2d 853.

No. 92–8743. Persyn *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 984 F. 2d 635.

No. 92–8744. Montgomery *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 124.

No. 92–8749. Wright *v.* Deland, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1432.

No. 92–8751. Sauls *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 979 F. 2d 209.

No. 92–8752. Solis *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 92–8753. Hall *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 614 So. 2d 473.

No. 92–8757. Galloway *v.* Borg, Warden. Sup. Ct. Cal. Certiorari denied.

No. 92–8764. Horton *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 92–8766. Johnson *v.* Detroit College of Law et al. C. A. 6th Cir. Certiorari denied. Reported below: 980 F. 2d 730.

No. 92–8769. Lugo *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 983 F. 2d 1070.

No. 92–8772. Murphy *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 65 Ohio St. 3d 554, 605 N. E. 2d 884.

No. 92–8773. Dortch et al. *v.* Godinez, Warden, et al. C. A. 7th Cir. Certiorari denied.

No. 92–8774. Kumes *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 212.

No. 92–8775. Enquist *v.* DuCharme, Superintendent, Washington State Reformatory. C. A. 9th Cir. Certiorari denied.

No. 92–8776. Rose *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 231.

No. 92–8777. Martin *v.* McKune, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1428.

No. 92–8778. Parks *v.* Service America Corp. et al. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 92–8780. Lucas et al. *v.* Lightfoot et al. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 771.

No. 92–8781. Ives *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 984 F. 2d 649.

No. 92–8783. Fields *v.* Brecher et al. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 606 So. 2d 1237.

No. 92–8786. Willis *v.* United States District Court for the Northern District of Texas et al. C. A. 5th Cir. Certiorari denied.

No. 92–8787. Zinn *v.* Tansy, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 508.

No. 92–8789. Tamara B. *v.* Pete F. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 2d 157, 585 N. Y. S. 2d 757.

No. 92–8791. Yahr *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 770.

No. 92–8794. Rivas Cruz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1415.

No. 92–8795. Foster *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 974 F. 2d 1474.

No. 92–8796. Krause *v.* Whitley et al. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 573.

No. 92-8797. Jones *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 612 So. 2d 1370.

No. 92-8800. Bohling *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 173 Wis. 2d 529, 494 N. W. 2d 399.

No. 92-8802. Curry *v.* Ledger Publishing Corp. et al. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 506.

No. 92-8805. Reed *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 173 Wis. 2d 305, 498 N. W. 2d 912.

No. 92-8806. Van Ackeren *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 242 Neb. 479, 495 N. W. 2d 630.

No. 92-8809. Lamb *v.* O'Dea, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 500.

No. 92-8810. Manker *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 92-8811. Sneezer *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 920.

No. 92-8812. Williams *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 237.

No. 92-8814. Sweet *v.* County of Los Angeles et al. C. A. 9th Cir. Certiorari denied.

No. 92-8817. Clark *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 613 So. 2d 412.

No. 92-8822. Johnson *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 4th 1183, 842 P. 2d 1.

No. 92-8823. Hoye *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 981 F. 2d 1252.

No. 92-8825. Sheeder *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 125.

No. 92–8827. STOUFFER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 916.

No. 92–8831. ISBY *v.* WRIGHT, SUPERINTENDENT, MAXIMUM CONTROL COMPLEX, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 986 F. 2d 1424.

No. 92–8834. YOUNG *v.* HOFFMAN. C. A. 2d Cir. Certiorari denied. Reported below: 970 F. 2d 1154.

No. 92–8843. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 92–8845. BROOKS *v.* GRAMLEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 92–8846. SCOTT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 92–8847. WATTS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 92–8849. BARBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 791.

No. 92–8850. BARKLEY *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 315 Ore. 420, 846 P. 2d 390.

No. 92–8851. SHEEHAN *v.* BEYER. C. A. 3d Cir. Certiorari denied.

No. 92–8853. FITE *v.* CANTRELL ET AL. C. A. 6th Cir. Certiorari denied.

No. 92–8855. MUNIZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 851 S. W. 2d 238.

No. 92–8856. GEIGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1213.

No. 92–8860. REEDOM *v.* KHVN RADIO ET AL. C. A. 5th Cir. Certiorari denied.

No. 92–8862. NEWTOP *v.* SAN FRANCISCO COUNTY SUPERIOR COURT. Sup. Ct. Cal. Certiorari denied.

No. 92–8863. NEWTOP *v.* SAN FRANCISCO COUNTY SUPERIOR COURT. Sup. Ct. Cal. Certiorari denied.

No. 92–8864. NEWTOP *v.* SAN FRANCISCO COUNTY SUPERIOR COURT. Sup. Ct. Cal. Certiorari denied.

No. 92–8865. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 770.

No. 92–8866. MCCORMICK *v.* CITY OF DALLAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 92–8867. BURNS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92–8869. LANGFORD *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 67 Wash. App. 572, 837 P. 2d 1037.

No. 92–8871. YOUNG *v.* GROOSE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 92–8874. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 92–8875. FORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 11 Cal. App. 4th 175, 15 Cal. Rptr. 2d 112.

No. 92–8877. HARRIS *v.* BURTON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 92–8878. GRISWOLD *v.* BRYANT, ATTORNEY GENERAL OF ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 504.

No. 92–8879. HARRIS *v.* GRAMLEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 986 F. 2d 1424.

No. 92–8883. ORTIZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 92–8884. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 1314.

No. 92–8886. GLASS *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 502.

No. 92–8887. Tripati *v.* Reinstein, Judge, et al.; and Tripati *v.* Superior Court of Arizona et al. Sup. Ct. Ariz. Certiorari denied.

No. 92–8889. Hodges *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 92–8890. Shrewsberry *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 1296.

No. 92–8891. Debbs et ux. *v.* Mastagni, Holstedt, Chiurazzi & Curtis. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 92–8892. Valdez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 92–8893. Cedric Houston T. *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–8895. Scarbrough *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 990 F. 2d 296.

No. 92–8896. Vukadinovich *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 604 N. E. 2d 1267.

No. 92–8897. Card *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 2d 481.

No. 92–8899. Parker *v.* United States; and
No. 92–9223. Parker *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 1493.

No. 92–8902. Zebulon *v.* Tran et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 92–8903. Siegel *v.* Grievance Committee, Ninth Judicial District. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 182 App. Div. 2d 170, 586 N. Y. S. 2d 822.

No. 92–8904. Thomas *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 971 F. 2d 147.

No. 92–8907. Gray *v.* Hopkins, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 1236.

No. 92–8908. KUNKLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 852 S. W. 2d 499.

No. 92–8909. HOWARD *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1401, 875 P. 2d 1063.

No. 92–8910. EVANS *v.* BAER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1413.

No. 92–8911. JOLLY *v.* BOWERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 6 F. 3d 783.

No. 92–8912. FRANKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 770.

No. 92–8914. AMANFO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 319.

No. 92–8915. MARCIANO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 92–8916. MAXIE *v.* SUPERIOR COURT OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–8917. LAMBERT *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 92–8918. MCQUEEN *v.* POLLARD. C. A. 5th Cir. Certiorari denied.

No. 92–8919. PATINO *v.* LAWSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 772.

No. 92–8920. CONNELL *v.* HOME FED BANK ET AL. C. A. 9th Cir. Certiorari denied.

No. 92–8921. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 92–8923. GRAIBE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 92–8924. BROWNE *v.* BUCK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 986 F. 2d 1408.

No. 92–8925. KAVANAGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1078.

No. 92–8926. BROWDER *v.* MARSHALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1255.

No. 92–8927. BROWN *v.* KINCHELOE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 959 F. 2d 239.

No. 92–8928. NOEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 685.

No. 92–8929. PHARM *v.* HATCHER, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 783.

No. 92–8930. PAGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 226.

No. 92–8931. LOYD *v.* CRIMINAL DISTRICT COURT #1 OF DALLAS COUNTY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1211.

No. 92–8932. PIZZO *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 92–8935. SAMMONS *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 92–8936. GIRALDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 92–8938. WAGNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1080.

No. 92–8939. TAYLOR *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 92–8940. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 2d 1074.

No. 92–8941. HUFF *v.* ABC ENTERPRISES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 92–8942. KECKLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 772.

No. 92–8943. MARTINEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 685.

No. 92–8944. Newell *v.* Brown, Director, Michigan Department of Corrections, et al. C. A. 6th Cir. Certiorari denied. Reported below: 981 F. 2d 880.

No. 92–8945. Barry et al. *v.* Federal Land Bank. C. A. 8th Cir. Certiorari denied. Reported below: 978 F. 2d 1263.

No. 92–8946. White *v.* District of Columbia. Ct. App. D. C. Certiorari denied.

No. 92–8947. Corrigan *v.* Tompkins et al. Ct. App. Wash. Certiorari denied. Reported below: 67 Wash. App. 475, 836 P. 2d 260.

No. 92–8948. Allen *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 771.

No. 92–8949. Harris *v.* County of Sacramento, California, et al. C. A. 9th Cir. Certiorari denied.

No. 92–8950. Rothwell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 557.

No. 92–8951. Glover *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1430.

No. 92–8952. Schultz *v.* Wisconsin. Ct. App. Wis. Certiorari denied.

No. 92–8953. Scott *v.* Judicial Inquiry and Review Board. Sup. Ct. Pa. Certiorari denied.

No. 92–8955. Charlie *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 92–8956. Buckner *v.* Taylor, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 491.

No. 92–8958. Thomle *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 126.

No. 92–8959. Sinclair *v.* Henman, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 407.

No. 92–8960. Davis *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 92–8961. Anderson *v.* Angelone et al. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1075.

No. 92–8962. Parnell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 557.

No. 92–8963. McKinnon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 525.

No. 92–8965. Rivera *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 986 F. 2d 1462.

No. 92–8966. Rodriguez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 720.

No. 92–8967. Payne *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 982 F. 2d 335.

No. 92–8968. Larson *v.* Dorsey, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 507.

No. 92–8969. Morton *v.* Burton, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 775.

No. 92–8970. Love *v.* Brigano. C. A. 6th Cir. Certiorari denied.

No. 92–8971. Harvey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 92–8972. Helms *v.* Reynolds, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 982 F. 2d 528.

No. 92–8973. Kuniara, aka Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 232.

No. 92–8974. Guder et al. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1430.

No. 92–8975. Gibson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 775.

No. 92–8976. Heath *v.* Strack, Superintendent, Fishkill Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 92–8977. Horne *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1216.

No. 92–8978. Kang *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 226.

No. 92–8979. Foster *v.* Bedell. Sup. Ct. N. H. Certiorari denied. Reported below: 136 N. H. 728, 621 A. 2d 936.

No. 92–8980. Saleem *v.* Thomas, Warden. C. A. 11th Cir. Certiorari denied.

No. 92–8981. Stokes *v.* American Express Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 508.

No. 92–8983. Watts *v.* Hargett, Warden. C. A. 5th Cir. Certiorari denied.

No. 92–8984. Vukadinovich *v.* Board of School Trustees of the Michigan City Area Schools et al. C. A. 7th Cir. Certiorari denied. Reported below: 978 F. 2d 403.

No. 92–8985. Seay *v.* Eaton. C. A. 2d Cir. Certiorari denied.

No. 92–8988. Green *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 92–8989. Dominguez-Alparo *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 508.

No. 92–8990. Reynolds *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92–8991. Rocha *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1422.

No. 92–8992. Mosley *v.* Pung, Commissioner, Minnesota Department of Corrections, et al. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 503.

No. 92–8993. Simard *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 92–8994. Castro *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 844 P. 2d 159.

No. 92–8995. Schmitz *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 173 Wis. 2d 304, 498 N. W. 2d 912.

No. 92-8997. BAILEY *v.* HENMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 92-8998. BOAGS *v.* BEVERLY HILLS MUNICIPAL COURT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 117.

No. 92-8999. BOUNDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 188.

No. 92-9001. MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 92-9002. PATRICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 988 F. 2d 641.

No. 92-9003. LUCAS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 613 So. 2d 408.

No. 92-9004. VEALE ET AL. *v.* TOWN OF MARLBOROUGH, NEW HAMPSHIRE. Super. Ct. N. H., Cheshire County. Certiorari denied.

No. 92-9005. BELL *v.* DEEDS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 92-9007. MORGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 124.

No. 92-9008. MCGOUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 92-9009. PITTMAN *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 174 Wis. 2d 255, 496 N. W. 2d 74.

No. 92-9010. CLARKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 227.

No. 92-9011. ALLEN *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 92-9013. OKECHUKWU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 319.

No. 92-9015. BERRIOS-COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 485.

No. 92–9016. McDonald *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 92–9017. Balderas *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 989 F. 2d 1203.

No. 92–9019. Petry *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1212.

No. 92–9020. Bona *v.* GNAC Corp. Super. Ct. N. J., App. Div. Certiorari denied.

No. 92–9021. Bona *v.* GNAC Corp. Super. Ct. N. J., Atlantic County, Chan. Div. Certiorari denied.

No. 92–9022. Rowland *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 4th 238, 841 P. 2d 897.

No. 92–9023. Veltman *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 887.

No. 92–9024. Zack *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 92–9025. Steele *v.* California Department of Social Services. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–9026. Greenwood, aka Maddox *v.* Keane, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 92–9027. Hill *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1251.

No. 92–9028. Hudson *v.* Williams, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 92–9029. Plummer *v.* Neal, Assistant Deputy Director, Illinois Department of Corrections. C. A. 7th Cir. Certiorari denied.

No. 92–9030. Northington *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 92–9031. MITCHELL *v.* TOTTEN ET AL. C. A. 6th Cir. Certiorari denied.

No. 92–9032. LAWAL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 92–9034. OUTLAW *v.* MAPP ET AL. Cir. Ct. City of Norfolk, Va. Certiorari denied.

No. 92–9035. PRICE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 92–9036. MCCULLOUGH *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 92–9037. COTE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 92–9038. COLON *v.* MCCLELLAN, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 319.

No. 92–9039. GETTINGS *v.* MCKUNE, WARDEN, ET AL. Sup. Ct. Kan. Certiorari denied.

No. 92–9040. GAMBINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 92–9041. BURGER *v.* ZANT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 984 F. 2d 1129.

No. 92–9042. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1212.

No. 92–9043. THRASHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1260.

No. 92–9044. UWAJE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 92–9045. SUTTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1218.

No. 92–9046. CARSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 80.

No. 92–9047. WEINER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 988 F. 2d 629.

No. 92–9048. STEWART *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 245 Va. 222, 427 S. E. 2d 394.

No. 92–9050. THOMPSON *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1260.

No. 92–9051. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1211.

No. 92–9052. FOSTER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 92–9053. PRATT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 995 F. 2d 306.

No. 92–9055. TENON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 92–9056. TOMAZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–9057. SANCHEZ *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 92–9058. WEBSTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92–9060. TABOR *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 92–9061. WREST *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 4th 1088, 839 P. 2d 1020.

No. 92–9062. SILAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 320.

No. 92–9063. CRAWFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 905.

No. 92–9064. BURROWS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 321.

No. 92–9065. CRENSHAW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 980 F. 2d 731.

No. 92–9066. Sparhawk *v.* Shalala, Secretary of Health and Human Services. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 2d 591.

No. 92–9067. Sistrunk *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 92–9068. Bover *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 92–9071. Moreno *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92–9072. Potter *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 948.

No. 92–9073. Mitchell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92–9074. Lockhart *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 847 S. W. 2d 568.

No. 92–9075. Winborn *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 775.

No. 92–9076. Walker *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 92–9077. Clark *v.* Nagle, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 92–9078. Walker *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 92–9079. Williams *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92–9080. Alvarez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 987 F. 2d 77.

No. 92–9081. Gilmore *v.* National Labor Relations Board. C. A. 2d Cir. Certiorari denied.

No. 92–9082. Kleinschmidt *v.* Schwartz, Chief Judge, District Court of Appeal of Florida, Third District, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 2d 1262.

No. 92–9083. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 983 F. 2d 1058.

No. 92–9084. KITCHENS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 749.

No. 92–9085. JORGENSEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 67 Wash. App. 572, 837 P. 2d 1037.

No. 92–9086. GALVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 739.

No. 92–9087. KALTENBACH *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 92–9088. BARNETT *v.* UNITED STATES; and
No. 93–5018. JORDAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 546.

No. 92–9089. AISPURO-AISPURO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 122.

No. 92–9090. DOCKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 888.

No. 92–9091. MALDONADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 92–9092. NORMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 92–9094. LACEY *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 579.

No. 92–9096. MURRAY *v.* STEMPSON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 92–9097. ROBBINS *v.* GRANT. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 121.

No. 92–9099. JONES *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 92–9102. Christianson *v.* Nebraska. Ct. App. Neb. Certiorari denied. Reported below: 2 Neb. App. 223.

No. 92–9103. Webb *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92–9104. Diaz *v.* Richards et al. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 2d 1072.

No. 92–9106. Fox *v.* Hutton et al. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 505.

No. 92–9107. Gonsalves *v.* Internal Revenue Service et al. C. A. 1st Cir. Certiorari denied. Reported below: 986 F. 2d 1407.

No. 92–9108. Perryman *v.* Department of Labor et al. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1062.

No. 92–9109. Smith *v.* Johnson, Warden. C. A. 6th Cir. Certiorari denied.

No. 92–9110. Valdez *v.* Gunter, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 988 F. 2d 91.

No. 92–9111. Vargas *v.* Shur et al. C. A. 11th Cir. Certiorari denied.

No. 92–9113. Sweet *v.* Voinovich, Governor of Ohio, et al. C. A. 6th Cir. Certiorari denied.

No. 92–9114. Willis *v.* City of Cleveland. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 92–9115. Sack *v.* St. Francis Hospital et al. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 508.

No. 92–9116. Terrizzi *v.* Stainer, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1260.

No. 92–9117. Small *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 125.

No. 92–9119. Cooks *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 92–9120. Barnwell *v.* Lewis, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 117.

No. 92–9121. Russell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265.

No. 92–9122. Darby *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1081.

No. 92–9123. Dixon *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 92–9124. Vannorsdell *v.* Rowland, Warden. C. A. 9th Cir. Certiorari denied.

No. 92–9125. Horne *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 987 F. 2d 833.

No. 92–9126. Guevara *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 92–9127. Johnson *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 853 S. W. 2d 527.

No. 92–9128. Pierce *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 92–9130. Montalvo *v.* United States Parole Commission. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1211.

No. 92–9131. Lilly *v.* Gilmore, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 783.

No. 92–9132. Sloan *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 92–9133. Thurman *v.* Curran, Attorney General of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1415.

No. 92–9134. Dang Minh Tran *v.* Maass, Superintendent, Oregon State Penitentiary. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1260.

No. 92-9135. TARAZON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 989 F. 2d 1045.

No. 92-9136. WILLIAMS *v.* UNITED STATES; and
No. 93-5500. FRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1218.

No. 92-9137. SEALS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 1102.

No. 92-9138. WOOTEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 876, 426 S. E. 2d 852.

No. 92-9139. TOWARD *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 574.

No. 92-9140. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92-9141. PARISH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 92-9142. PERSLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 92-9143. MACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1216.

No. 92-9144. MINGO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1377.

No. 92-9145. OWENS *v.* ASHLEY. C. A. 11th Cir. Certiorari denied.

No. 92-9147. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 251.

No. 92-9148. CLAYTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92-9149. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 92-9150. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 92–9151. Bustillo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 92–9152. Brown *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 526.

No. 92–9154. Wooten *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1266.

No. 92–9155. Alvarez *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–9156. August *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 984 F. 2d 705.

No. 92–9157. Kelly *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 162.

No. 92–9159. Jeffress *v.* Reno, Attorney General of the United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 493.

No. 92–9160. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 92–9161. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 92–9162. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 92–9163. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 92–9164. Laviguer *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 92–9165. Armando Rueda *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 982 F. 2d 906.

No. 92–9166. Rivera *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 227.

No. 92–9167. Reyes et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 92–9168. Scott *v.* Tyson Foods, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 503.

No. 92–9169. WARD *v.* WHITE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 92–9170. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 92–9171. WASHINGTON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 92–9172. OGUNLEYE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 92–9173. MYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 983 F. 2d 1058.

No. 92–9174. ROBINSON ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 238.

No. 92–9175. MARTIN *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 329 Md. 351, 619 A. 2d 992.

No. 92–9176. SPELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 92–9177. LOPEZ-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 92–9178. DAVIAS *v.* CUNNINGHAM, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 92–9181. MARTINEZ *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 92–9183. LIGGINS *v.* CLARKE ET AL. C. A. 8th Cir. Certiorari denied.

No. 92–9184. CROSS *v.* SLOCUM. Sup. Ct. Cal. Certiorari denied.

No. 92–9185. CAMELO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 92–9186. LAOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 720.

No. 92–9187. MARISIO-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 243.

No. 92–9188. Gonzales Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 92–9189. Hope *v.* Davis, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1083.

No. 92–9190. Frias *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 983 F. 2d 369.

No. 92–9191. Brown *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 982 F. 2d 526.

No. 92–9192. McFall *v.* Wilkinson et al. C. A. 6th Cir. Certiorari denied. Reported below: 977 F. 2d 582.

No. 92–9193. Lane *v.* Ramey et al. C. A. 5th Cir. Certiorari denied.

No. 92–9194. Northington *v.* Hoffman et al. C. A. 6th Cir. Certiorari denied.

No. 92–9195. Mitchell *v.* Heckemeyer, Judge, Circuit Court, Mississippi County, Missouri. Sup. Ct. Mo. Certiorari denied.

No. 92–9196. Keister *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 92–9197. Arnold *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 970.

No. 92–9198. Harris *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 92–9199. Dunbar *v.* Utah. Sup. Ct. Utah. Certiorari denied. Reported below: 853 P. 2d 897.

No. 92–9200. Cote *v.* Donovan, Warden, et al. C. A. 1st Cir. Certiorari denied.

No. 92–9201. Bellman *v.* Chesney, Superintendent, State Correctional Institution at Frackville, et al. C. A. 3d Cir. Certiorari denied.

No. 92–9202. Crayton *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 846 S. W. 2d 684.

No. 92–9203. Agron *v.* Clinton, President of the United States, et al. C. A. 3d Cir. Certiorari denied.

No. 92–9204. Christiansen *v.* Clinton, President of the United States, et al. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 571.

No. 92–9205. Bertram *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 771.

No. 92–9206. Brady *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 988 F. 2d 664.

No. 92–9207. Allum *v.* Valley Bank of Nevada et al. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 280, 849 P. 2d 297.

No. 92–9208. Johnson *v.* English et al. C. A. 3d Cir. Certiorari denied.

No. 92–9209. Johnson *v.* Sigismonti et al. C. A. 3d Cir. Certiorari denied.

No. 92–9210. Harris *v.* McCaughtry, Warden, et al. Ct. App. Wis. Certiorari denied.

No. 92–9211. Grandison, aka Tariq *v.* Federal Bureau of Prisons et al. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 492.

No. 92–9212. Harvey *v.* Smith, Judge, United States District Court for the Western District of Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 304.

No. 92–9213. Thornton *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 92–9214. Willis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 992 F. 2d 489.

No. 92–9215. Wright *v.* Dutton, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 92–9216. Kenny *v.* Borgert, Warden. C. A. 6th Cir. Certiorari denied.

No. 92–9217. GILES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 92–9218. RYLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 13.

No. 92–9219. OTIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 92–9220. MCLAUGHLIN *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 621 A. 2d 170.

No. 92–9221. BOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 92–9222. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 92–9224. HICKEY, AKA HABERSTROH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 22, 846 P. 2d 289.

No. 92–9225. DENT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 1453.

No. 92–9226. SNOW *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1416, 875 P. 2d 1078.

No. 92–9227. CANGA-RENTERIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 92–9229. BERNSTEIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 92–9230. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 16.

No. 92–9231. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265 and 991 F. 2d 533.

No. 92–9232. SUTHERLAND *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 155 Ill. 2d 1, 610 N. E. 2d 1.

No. 92–9233. STRICKLAND *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 154 Ill. 2d 489, 609 N. E. 2d 1366.

No. 92–9234. DEMPSEY *v.* SEARS, ROEBUCK & CO. App. Ct. Mass. Certiorari denied.

No. 92–9235. CATO *v.* MORALES, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1212.

No. 92–9236. COBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1078.

No. 92–9237. DOWNS *v.* KING, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 92–9238. BEAVERS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 245 Va. 268, 427 S. E. 2d 411.

No. 92–9239. BROWNING *v.* MARANS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1256.

No. 92–9240. DENLINGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 93–1. LAVESPERE *v.* NIAGARA MACHINE & TOOL WORKS, INC. C. A. 5th Cir. Certiorari denied.

No. 93–2. DULA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 772.

No. 93–5. WATERS ET AL. *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 93–6. YARI *v.* WINDSOR PROPERTIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 771.

No. 93–7. AMERICAN DENTAL ASSN. *v.* REICH, SECRETARY OF LABOR, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 823.

No. 93–8. GLEESON *v.* KAMINSKI ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 420 Pa. Super. 228, 616 A. 2d 667.

No. 93–10. CULLEN *v.* TRAINOR, ROBERTSON, SMITS & WADE ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–11. QUILL CORP. *v.* NORTH DAKOTA, BY AND THROUGH ITS TAX COMMISSIONER, HANSON. Sup. Ct. N. D. Certiorari denied. Reported below: 500 N. W. 2d 196.

No. 93–12. RACKLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1357.

No. 93–13. PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL. *v.* RICE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–15. NERO *v.* DONLEY, ACTING SECRETARY OF THE AIR FORCE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1428.

No. 93–16. ST. HILAIRE *v.* MAINE SUPERINTENDENT OF INSURANCE. Sup. Jud. Ct. Me. Certiorari denied.

No. 93–18. SWENSON ET AL. *v.* OGLALA SIOUX TRIBE. Sup. Ct. Idaho. Certiorari denied. Reported below: 123 Idaho 464, 849 P. 2d 925.

No. 93–20. JOHNSTON *v.* ZEFF & ZEFF ET AL. Ct. App. Mich. Certiorari denied.

No. 93–21. MS. B *v.* MONTGOMERY COUNTY EMERGENCY SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 488.

No. 93–22. CHAMBERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1083.

No. 93–23. MAXWELL *v.* MONSANTO CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 1419.

No. 93–24. PROGRESSIVE CELLULAR III B–3 *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 986 F. 2d 546.

No. 93–25. STRAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 772.

No. 93–26. DUNCAN *v.* COBB ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 93–27. HAZRA *v.* NATIONAL RX SERVICES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 560.

No. 93–28. VOULGARELIS *v.* VOULGARELIS. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 183 App. Div. 2d 891, 584 N. Y. S. 2d 149.

No. 93–30. HAMMOND ET AL. *v.* AIR LINE PILOTS ASSN., INTERNATIONAL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 981 F. 2d 1524.

No. 93–31. WEST *v.* BUFFALO CENTER-RAKE SCHOOL DISTRICT, BY ITS BOARD OF DIRECTORS. Ct. App. Iowa. Certiorari denied.

No. 93–32. PHELPS *v.* YALE SECURITY, INC. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1020.

No. 93–33. ALVAREZ-AGUIRRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 627.

No. 93–35. HERRING *v.* M/A COM, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 976 F. 2d 742.

No. 93–36. DAVIS *v.* ALEXANDER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 978 F. 2d 714.

No. 93–37. DIMMIG *v.* WAHL, SHERIFF, LASALLE COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 983 F. 2d 86.

No. 93–39. NATIONAL CAR RENTAL SYSTEM, INC. *v.* COMPUTER ASSOCIATES INTERNATIONAL, INC. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 426.

No. 93–40. SCINTO *v.* STAMM ET AL. Sup. Ct. Conn. Certiorari denied. Reported below: 224 Conn. 524, 620 A. 2d 99.

No. 93–41. HOFFNER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 237 Ill. App. 3d 462, 603 N. E. 2d 1280.

No. 93–42. MITCHELL ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1219.

No. 93–43. ILLINOIS CENTRAL RAILROAD *v.* MARTIN, SPECIAL ADMINISTRATOR OF THE ESTATE OF MARTIN, DECEASED. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 237 Ill. App. 3d 910, 606 N. E. 2d 9.

No. 93–46. MARTIN *v.* SHEARSON LEHMAN HUTTON, INC. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 242.

No. 93–47. ARA AUTOMOTIVE GROUP, DIVISION OF REEVES BROTHERS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93–48. CURTIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 946.

No. 93–49. ELDRIDGE, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF ELDRIDGE, DECEASED *v.* COBB COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 93–54. KELLEY *v.* KIRKPATRICK & LOCKHART ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 93–55. BOOKER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 982 F. 2d 517.

No. 93–56. HUCKE *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 950.

No. 93–57. EASTON *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 2d 230, 585 N. Y. S. 2d 776.

No. 93–59. ELECTRICAL WORKERS' PENSION TRUST FUND OF LOCAL UNION #58 ET AL. *v.* ELECTRIC ONE, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 794.

No. 93–61. CASHIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 93–62. COAR *v.* KAZIMIR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 990 F. 2d 1413.

No. 93–64. BI, INDIVIDUALLY AND ON BEHALF OF THE CHILDREN OF KAHN, AND AS REPRESENTATIVE OF THE ESTATE OF KAHN, ET AL. *v.* UNION CARBIDE CHEMICALS & PLASTICS CO., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 984 F. 2d 582.

No. 93–65. LONG *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 615 So. 2d 114.

No. 93–67. HARRIS *v.* OFFICE OF DISCIPLINARY COUNSEL OF THE SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 93–72. LINCOLN ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 93–74. CHEPPA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 421 Pa. Super. 649, 613 A. 2d 29.

No. 93–75. PLYMOUTH HEALTHCARE SYSTEMS, INC., ET AL. *v.* KEYSTONE HEALTH PLAN EAST, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 878.

No. 93–76. CHERREY ET UX. *v.* DIAZ ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 787.

No. 93–77. RANDOL ET VIR *v.* MID-WEST NATIONAL LIFE INSURANCE CO. OF TENNESSEE. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 1547.

No. 93–78. GILHOOLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 979 F. 2d 846.

No. 93–79. EDWARDS *v.* ARLINGTON HOSPITAL ASSN. ET AL. Sup. Ct. Va. Certiorari denied.

No. 93–80. SUZUKI MOTOR CORP. ET AL. *v.* MALAUTEA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 1536.

No. 93–82. REGENTS OF UNIVERSITY OF CALIFORNIA ET AL. *v.* SMITH ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 4th 843, 844 P. 2d 500.

No. 93–83. ADAMS ET AL. *v.* WALTER INDUSTRIES, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–84. SHELL OIL CO. *v.* NELSON ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–87. MCI TELECOMMUNICATIONS CORP. *v.* DANELLA CONSTRUCTION CORP. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 876.

No. 93–88. FERNANDES *v.* ROCKAWAY TOWNSHIP TOWN COUNCIL ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93-89. HOUSER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 36 M. J. 392.

No. 93-91. KITTAY, CHAPTER 11 TRUSTEE FOR STOCKBRIDGE FUNDING CORP. *v.* FARMERS BANK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 988 F. 2d 498.

No. 93-92. WILLIAMS *v.* PALMORE, SECRETARY, LABOR CABINET OF KENTUCKY, ET AL. Ct. App. Ky. Certiorari denied.

No. 93-93. ROANOKE RIVER BASIN ASSN. *v.* HUDSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 132.

No. 93-94. BISER *v.* TOWN OF BEL AIR, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 100.

No. 93-95. EDWARDS *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 93-98. ROBB *v.* ELECTRONIC DATA SYSTEMS. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1253.

No. 93-99. U. S. METROLINE SERVICES, INC. *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 601.

No. 93-101. GATES ET UX. *v.* PORT SAN LUIS HARBOR DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-103. TEXAS *v.* MITCHELL. Ct. Crim. App. Tex. Certiorari denied. Reported below: 853 S. W. 2d 1.

No. 93-104. FESTA *v.* LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93-106. AREA INTERSTATE TRUCKING, INC., ET AL. *v.* INDIANA DEPARTMENT OF REVENUE ET AL. Tax Ct. Ind. Certiorari denied. Reported below: 605 N. E. 2d 272.

No. 93-107. NOACK ET UX. *v.* STATE FARM FIRE & CASUALTY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93-110. AMERICAN COUNCIL OF THE BLIND OF COLORADO, INC., ET AL. *v.* ROMER, GOVERNOR OF COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 249.

No. 93–112. PRITCHARD ET UX. *v.* GOODIE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93–113. BERTHOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 574.

No. 93–114. LEGACY, LTD. *v.* CHANNEL HOME CENTERS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 682.

No. 93–117. BRISCOE *v.* DEVALL TOWING & BOAT SERVICE OF HACKBERRY, INC. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 323.

No. 93–118. KRIEGEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1213.

No. 93–119. CADLE CO. II, INC. *v.* CHASTEEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 805.

No. 93–121. WHITE PLAINS TOWING CORP., DBA DON'S TOWING, ET AL. *v.* WRIGHT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 991 F. 2d 1049.

No. 93–124. MICK ET AL. *v.* RESOLUTION TRUST CORPORATION, CONSERVATOR FOR IRVING FEDERAL SAVINGS & LOAN ASSN. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 878.

No. 93–126. SYVERSEN ET AL. *v.* SUMMIT WOMEN'S CENTER WEST, INC. C. A. 2d Cir. Certiorari denied. Reported below: 991 F. 2d 1039.

No. 93–129. HAMANN *v.* THRELKEL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–132. DVORAK *v.* FRITZ. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–133. SEALE *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 853 P. 2d 862.

No. 93–134. GRIFFITHS *v.* CIGNA CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 988 F. 2d 457.

No. 93–135. BURGESS *v.* STERN ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 311 S. C. 326, 428 S. E. 2d 880.

No. 93–136. WASHBURN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 321.

No. 93–137. MOBILE HOME VILLAGE, INC., T/A SOUTH WIND VILLAGE *v.* MAYOR AND COUNCIL OF TOWNSHIP OF JACKSON, NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–139. R. S. ET AL. *v.* CHILDREN AND YOUTH SERVICES OF PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 417 Pa. Super. 247, 612 A. 2d 465.

No. 93–140. CLEARY ET AL. *v.* KAISER FOUNDATION HEALTH PLAN OF CALIFORNIA, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–142. BURKS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 36 M. J. 447.

No. 93–145. MUNICIPAL LIGHT COMPANY OF ASHBURNHAM ET AL. *v.* MASSACHUSETTS ET AL. App. Ct. Mass. Certiorari denied. Reported below: 34 Mass. App. 162, 608 N. E. 2d 743.

No. 93–146. GREENE COUNTY MEMORIAL PARK ET AL. *v.* BEHM FUNERAL HOMES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 876.

No. 93–149. FISH *v.* COLLINGS ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–150. TAPIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 93–151. GREENE *v.* NEW YORK STOCK EXCHANGE, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1534.

No. 93–152. WALL *v.* ROCKWELL INTERNATIONAL CORP. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 506.

No. 93–153. ARNOLD, AKA AHMAD *v.* LEONARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 579.

No. 93–156. MIRA SLOVAK AEROBATICS, INC. *v.* CALIFORNIA STATE BOARD OF EQUALIZATION. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–157. CLEARY *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied.

No. 93–158. HILL *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 319.

No. 93–160. HAWKINS ET AL. *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 194 Mich. App. 134, 486 N. W. 2d 326.

No. 93–161. AMERICOM DISTRIBUTING CORP. *v.* ACS COMMUNICATIONS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 223.

No. 93–162. SMITH *v.* SCOTT PAPER CO. Sup. Ct. Ala. Certiorari denied. Reported below: 620 So. 2d 976.

No. 93–163. SMITH *v.* CITY OF DEL MAR. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–164. GEOPHYSICAL SYSTEMS CORP. *v.* RAYTHEON CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 119.

No. 93–165. TALLEY, INDIVIDUALLY AND IN HIS CAPACITY AS CO-ADMINISTRATOR OF THE ESTATE OF TALLEY, DECEASED *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 990 F. 2d 695.

No. 93–166. KILIMNIK ET AL. *v.* STOUMBOS, TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 949.

No. 93–167. PHEILS *v.* CITY OF PERRYSBURG. Ct. App. Ohio, Wood County. Certiorari denied.

No. 93–168. THOMPSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–169. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93–170. EPPERLY ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 737.

No. 93–173. ELLIOTT *v.* ADMINISTRATOR, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, UNITED STATES DEPARTMENT OF

AGRICULTURE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 990 F. 2d 140.

No. 93–174. STEWART *v.* RUNYON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 93–175. MOTHERSHED *v.* GREGG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 1551.

No. 93–177. CARLEY *v.* WHEELED COACH. C. A. 3d Cir. Certiorari denied. Reported below: 991 F. 2d 1117.

No. 93–178. JOSEPH *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93–181. SHORTY, INC. *v.* Q. G. PRODUCTS ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 992 F. 2d 1211.

No. 93–182. HOLABIRD SPORTS DISCOUNTERS *v.* TENNIS TUTOR, INC. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 228.

No. 93–184. JERNIGAN ET UX. *v.* ASHLAND OIL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 812.

No. 93–185. TUCKER *v.* CITY OF HARTFORD. Sup. Ct. Conn. Certiorari denied. Reported below: 225 Conn. 211, 621 A. 2d 1339.

No. 93–186. KEMP *v.* UNITED STATES; and
No. 93–5444. PRESSLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 822.

No. 93–188. WADE ET UX. *v.* HOPPER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1246.

No. 93–189. FETZNER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 420 Pa. Super. 551, 617 A. 2d 323.

No. 93–191. EF OPERATING CORP., T/A WEST MOTOR FREIGHT OF PENNSYLVANIA *v.* S. S. FISHER STEEL CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 1046.

No. 93–192. LANN ET AL. *v.* WESTERFIELD ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–195. Bakin *v.* Cox Enterprises, Inc., et al. Ct. App. Ga. Certiorari denied. Reported below: 206 Ga. App. 813, 426 S. E. 2d 651.

No. 93–197. Ventech Equipment, Inc. *v.* McNamara, Secretary of Revenue and Taxation of Louisiana. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 613 So. 2d 176.

No. 93–198. Hall *v.* Associated Doctors Health & Life Insurance Co. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 795.

No. 93–199. In re Rivera-Arvelo. Sup. Ct. P. R. Certiorari denied. Reported below: 133 D. P. R. —.

No. 93–200. Cowhig *v.* Stone, Secretary of the Army, et al. C. A. 1st Cir. Certiorari denied. Reported below: 980 F. 2d 721.

No. 93–203. McCary *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1238.

No. 93–204. Weingarten *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–205. Construction Interior Systems, Inc. *v.* Marriott Family Restaurants, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 984 F. 2d 749.

No. 93–206. Church of Scientology International *v.* Daniels. C. A. 4th Cir. Certiorari denied. Reported below: 992 F. 2d 1329.

No. 93–211. Jatoi *v.* Meier. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1253.

No. 93–218. Crawford et al. *v.* Air Line Pilots Assn., International. C. A. 4th Cir. Certiorari denied. Reported below: 992 F. 2d 1295.

No. 93–219. Richmond *v.* Nodland. Sup. Ct. N. D. Certiorari denied. Reported below: 501 N. W. 2d 759.

No. 93–225. St. George "Dixie" Lodge #1743, Benevolent and Protective Order of Elks *v.* Beynon. Sup. Ct. Utah. Certiorari denied. Reported below: 854 P. 2d 513.

No. 93–264. WADE ET AL. *v.* SHOOK, TRUSTEE. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 402.

No. 93–265. CRUMP *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1413.

No. 93–267. LAWMASTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 773.

No. 93–269. SHIEH *v.* NEWMAN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–272. SULCER *v.* CITIZENS BAND POTAWATOMI INDIAN TRIBE OF OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1429.

No. 93–280. VEREB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 880.

No. 93–287. WISE ET AL. *v.* EL PASO NATURAL GAS CO. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 929.

No. 93–291. CHURCH OF SPIRITUAL TECHNOLOGY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 991 F. 2d 812.

No. 93–303. CARTER ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 988 F. 2d 68.

No. 93–316. BARNETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93–322. GILBERT ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–5001. CORDOVA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 990 F. 2d 1035.

No. 93–5002. ANGUIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 93–5003. DOUGLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 93–5008. MOBLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 808, 426 S. E. 2d 150.

No. 93-5009. Rodriguez *v.* Marshall, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 93-5010. Ruchman et al. *v.* Wolff et al. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 880, 613 N. E. 2d 962.

No. 93-5011. Pompe *v.* City of Yonkers et al. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 706, 613 N. E. 2d 968.

No. 93-5012. Thrift *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 93-5013. Stewart *v.* United States; and
No. 93-5102. Gerard *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93-5014. Hamilton *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-5015. Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 93-5016. Eckert *v.* Eckert. Ct. App. Kan. Certiorari denied.

No. 93-5020. Wright *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 990 F. 2d 147.

No. 93-5021. Taylor *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93-5023. Sloan *v.* Sloan. Sup. Ct. Va. Certiorari denied.

No. 93-5024. Tilli *v.* Board of Review. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93-5026. Seaton *v.* Jabe, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 79.

No. 93-5027. Pullen *v.* Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 843 S. W. 2d 360.

No. 93-5028. Langham *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 806.

No. 93-5029. MYRICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1218.

No. 93-5030. BROWN *v.* CHICOPEE FIRE FIGHTERS, LOCAL 1710, IAFF, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 484.

No. 93-5031. PIERCE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 612 So. 2d 516.

No. 93-5032. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 24.

No. 93-5033. OGLESBY *v.* MAKEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93-5034. MATTISON *v.* QUARLES. C. A. 6th Cir. Certiorari denied.

No. 93-5035. LANE *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 805.

No. 93-5036. MERCHANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 93-5038. HOWARD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93-5039. HOLTZCLAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93-5040. GREEN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1377.

No. 93-5041. GIBBONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 994 F. 2d 299.

No. 93-5042. BIRDO *v.* SAWYER. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 93-5043. IREDIA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 981 F. 2d 847.

No. 93-5046. TAYLOR *v.* LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 93-5047. DUQUE-RODRIQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 485.

No. 93-5048. BUCKHALTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 875.

No. 93-5049. MOUNT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 484.

No. 93-5050. NELSON *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 93-5051. WARD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 154 Ill. 2d 272, 609 N. E. 2d 252.

No. 93-5052. SURBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1416.

No. 93-5053. SCOTT *v.* HILL. C. A. 9th Cir. Certiorari denied.

No. 93-5054. BROWN *v.* UNITED STATES; and SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 984 F. 2d 1074 (first case) and 1084 (second case).

No. 93-5056. GRUENBERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 971.

No. 93-5057. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93-5058. DEOBLER *v.* KINTZELE ET AL. Ct. App. Ariz. Certiorari denied.

No. 93-5059. CARCAISE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 93-5060. VIGIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 989 F. 2d 337.

No. 93-5061. SCHWARZ *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93-5063. WILLIAMS *v.* LEHIGH VALLEY CARPENTERS UNION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 880.

No. 93–5064. Jacobs *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 708.

No. 93–5065. Johnson *v.* Calvert et al. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 4th 84, 851 P. 2d 776.

No. 93–5066. Kelly *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 980.

No. 93–5067. Kim et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93–5068. Roston *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 986 F. 2d 1287.

No. 93–5069. Mack *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1238.

No. 93–5070. Montague *v.* Camp, Warden, et al. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 799.

No. 93–5071. Adams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 495.

No. 93–5072. Bye *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 93–5073. Allen *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93–5074. Bustamante *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 93–5075. Smith *v.* Barry et al. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 180.

No. 93–5076. Zuluaga *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 93–5080. Bey *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93–5081. Danielson *v.* Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1549.

No. 93–5082. Spruill *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 966 F. 2d 679.

No. 93-5083. Seibert *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 227.

No. 93-5084. Watt *v.* Arvonio, Attorney General of New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 880.

No. 93-5085. Woodard *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-5086. Smith *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 987 F. 2d 888.

No. 93-5087. Tucker *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 1453.

No. 93-5088. Simpson *v.* Lewis, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1260.

No. 93-5090. Lee *v.* Armontrout, Assistant Director, Missouri Department of Corrections. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 487.

No. 93-5091. Robinson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 93-5093. Medvecky *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 562.

No. 93-5094. Reedy *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 990 F. 2d 167.

No. 93-5095. O'Brien *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 972 F. 2d 47.

No. 93-5097. Maston *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 875.

No. 93-5098. Longstaff *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 618 So. 2d 215.

No. 93-5100. Green *v.* Sheffield, Superintendent, Dade Correctional Institution. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 720.

No. 93-5101. GILES *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 93-5103. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1213.

No. 93-5104. RODGERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-5105. KIRSCHENHUNTER *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, CORRECTIONS SERVICES, ET AL. C. A. 5th Cir. Certiorari denied.

No. 93-5106. ST. HILAIRE *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. Ct. App. Ariz. Certiorari denied.

No. 93-5107. JOHNSTON *v.* LEHMAN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1003.

No. 93-5108. HILL *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 93-5109. BALL *v.* MORRISON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93-5110. GOUGH *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93-5111. PAUL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 799.

No. 93-5112. LOUCKS ET AL. *v.* PHILLIPS PETROLEUM CO. C. A. 5th Cir. Certiorari denied. Reported below: 978 F. 2d 708.

No. 93-5113. MORISSETTE *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 93-5114. REIHLEY *v.* MCGILL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 121.

No. 93-5115. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93-5116. PARTEE *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 93-5117. POINTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-5118. LAYTON ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 2d 1496.

No. 93-5119. SUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93-5120. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 616 So. 2d 21.

No. 93-5121. JAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93-5122. GARLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 93-5123. JOHNSON *v.* MCKASKLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1063.

No. 93-5124. JOHNSON *v.* HARDCASTLE ET AL. C. A. 11th Cir. Certiorari denied.

No. 93-5125. DEMAURO *v.* COLDWELL, BANKER & CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 983 F. 2d 1049.

No. 93-5126. SCOTT ET UX. *v.* MANILLA ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 187 App. Div. 2d 1051, 592 N. Y. S. 2d 544.

No. 93-5130. ALCALA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 4th 742, 842 P. 2d 1192.

No. 93-5133. WEATHERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 226.

No. 93-5134. PEARSON, AKA CHARLES *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93-5135. ROBERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1268.

No. 93-5136. ASHOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93-5137. ADENIJI *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 223.

No. 93-5138. PISCIOTTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 93-5139. SANDERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 990 F. 2d 582.

No. 93-5141. JORDAN *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 933.

No. 93-5142. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 524.

No. 93-5143. CRABTREE *v.* UNITED STATES; and
No. 93-5192. CRAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 979 F. 2d 1261.

No. 93-5144. DE OCHOA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1217.

No. 93-5145. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1384.

No. 93-5146. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 93-5147. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 93-5148. HARTMAN *v.* POINTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 119.

No. 93-5149. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 481.

No. 93-5150. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1083.

No. 93-5151. TOLEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 985 F. 2d 1462.

No. 93–5152. SEBASTIAN *v.* UNITED STATES; and
No. 93–5712. FLYNN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 792.

No. 93–5153. VAN DER JAGT *v.* BROWN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 222.

No. 93–5154. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265.

No. 93–5155. SANCHEZ *v.* LOVELACE. C. A. 5th Cir. Certiorari denied.

No. 93–5156. BEAVER *v.* THOMPSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 93–5157. RUIZ-AVILA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 219.

No. 93–5159. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93–5162. PATTERSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 154 Ill. 2d 414, 610 N. E. 2d 16.

No. 93–5164. TYLER *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied.

No. 93–5165. FLETCHER *v.* MACDONALD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93–5166. THOMAS *v.* JOHNSON CONTROLS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 981 F. 2d 1256.

No. 93–5167. GALATOLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 719.

No. 93–5168. HANSON *v.* KELLY TEMPORARY SERVICES ET AL. C. A. 8th Cir. Certiorari denied.

No. 93–5169. ERVIN *v.* BUSBY, SHERIFF, CRITTENDEN COUNTY, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 147.

No. 93–5170. FERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1079.

No. 93–5172. Franklin *v.* Witkowski, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1413.

No. 93–5173. Green *v.* Chabad Jewish Organization. C. A. 3d Cir. Certiorari denied.

No. 93–5174. Koch *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 175 Wis. 2d 684, 499 N. W. 2d 152.

No. 93–5175. Woods *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5176. Ciecierski *v.* Avondale Shipyards, Inc., et al. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 614 So. 2d 367.

No. 93–5177. Crozier *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 987 F. 2d 893.

No. 93–5178. Dykstra *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 450.

No. 93–5179. Taylor *v.* Jones, Superintendent, Washington Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93–5181. Ward *v.* Berry, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 93–5182. Chapman *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1259.

No. 93–5183. Mallon *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1003.

No. 93–5184. Ojuade *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1250.

No. 93–5185. Medina-Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–5186. Lazenby *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–5187. Pruitt *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 190 App. Div. 2d 692, 593 N. Y. S. 2d 274.

No. 93–5188. NOLAN *v.* UNIVERSITY OF SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1414.

No. 93–5189. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 190.

No. 93–5190. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1212.

No. 93–5191. JELINEK *v.* WASCHE. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 503.

No. 93–5193. BARRIOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 966 F. 2d 1444.

No. 93–5194. ANKRUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93–5195. ALEXANDER *v.* ARMONTROUT, ASSISTANT DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 976.

No. 93–5196. TOWNES *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Cir. Ct. Mecklenburg County, Va. Certiorari denied.

No. 93–5198. LORENZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 1448.

No. 93–5199. ROJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93–5200. ROGERS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 317.

No. 93–5201. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 112.

No. 93–5202. CUSTER *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 118.

No. 93–5203. CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93–5205. PEARSON *v.* MAHON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 507.

No. 93–5207. Rankel *v.* Kelly et al. C. A. 2d Cir. Certiorari denied.

No. 93–5208. Brown *v.* Thomas, Warden. C. A. 11th Cir. Certiorari denied.

No. 93–5211. Reedom *v.* Summit Broadcasting Corp. C. A. 5th Cir. Certiorari denied.

No. 93–5213. Tuitt *v.* Government of the Virgin Islands. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 876.

No. 93–5214. Park *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 107.

No. 93–5215. McCorvey *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 124.

No. 93–5216. Messa-Perez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–5217. Langston *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 1419.

No. 93–5218. Carlton *v.* Pytell et al. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1421.

No. 93–5219. Brown *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 93–5220. Brown *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 1448.

No. 93–5221. Hassan *v.* Pruzansky et al. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93–5222. Felder *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 959 F. 2d 972.

No. 93–5223. Jacobi *v.* McCoy, Superintendent, Cayuga Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 93–5227. Medina-Elenes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–5228. Johnson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–5229. Chippas *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 93–5230. Alexander *v.* Black, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1209.

No. 93–5231. Sowder *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 826 S. W. 2d 924.

No. 93–5232. Blank *v.* Peers et al. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 794.

No. 93–5233. Duso *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1217.

No. 93–5234. Brown *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 495.

No. 93–5235. Travis *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 1316.

No. 93–5236. Relford *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5237. Delzer *v.* United Bank of Bismarck. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 504.

No. 93–5239. Cunningham *v.* Leonardo, Superintendent, Great Meadow Correctional Facility, et al. C. A. 2d Cir. Certiorari denied.

No. 93–5240. Williams *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 880.

No. 93–5241. Chatman *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 994 F. 2d 1510.

No. 93–5242. Grant *v.* New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 986 F. 2d 499.

No. 93–5243. Estrella, aka Arce *v.* Campbell. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 492.

No. 93–5244. Garcia et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 590.

No. 93-5245. Kailey *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 93-5246. Edwards *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 804.

No. 93-5247. Isiah B. *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 176 Wis. 2d 639, 500 N. W. 2d 637.

No. 93-5248. Jenkins, aka Davis *v.* Leonardo, Superintendent, Great Meadow Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 991 F. 2d 1033.

No. 93-5251. Varela *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 686.

No. 93-5253. Sims *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93-5254. Shearon et al. *v.* Lynch, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 257.

No. 93-5255. Williams *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 806.

No. 93-5257. Sanchez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1253.

No. 93-5259. De la Beckwith *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 615 So. 2d 1134.

No. 93-5260. Boozer *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93-5261. Demere *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93-5262. Sanchez *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93-5263. Swain *v.* Accountants on Call. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-5265. McQueen *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–5266. Munda *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–5267. Ransom *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 49.

No. 93–5268. Onuoha *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93–5269. Lyles *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1064.

No. 93–5270. Pierce *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5271. Melton *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93–5272. Mordi *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 323.

No. 93–5273. Mitchell *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 93–5274. Ontiveros *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–5275. Sanders *v.* Illinois Department of Corrections et al. C. A. 7th Cir. Certiorari denied.

No. 93–5277. Tyler *v.* Geiler et al. C. A. 8th Cir. Certiorari denied. Reported below: 6 F. 3d 785.

No. 93–5278. Harvey *v.* Perrill, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 805.

No. 93–5279. Harris *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5280. Kaylor *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1218.

No. 93–5281. Harley *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1340.

No. 93–5282. Kukes *v.* Duncan, Warden. Sup. Ct. Cal. Certiorari denied.

No. 93–5285. FORTNER *v.* DUGGER, SUPERINTENDENT, PUTNAM CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93–5286. HALEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93–5287. WILLIAMS ET VIR *v.* TRUMBAUER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 649, 616 A. 2d 727.

No. 93–5289. DEVANEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 75.

No. 93–5291. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 323.

No. 93–5293. WARD *v.* MARYLAND. Cir. Ct. Wicomico County, Md. Certiorari denied.

No. 93–5295. ATHERTON *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 93–5296. YARRITO *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 323.

No. 93–5297. JOHNSON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 1 F. 3d 1251.

No. 93–5298. HARKER *v.* STATE USE INDUSTRIES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 990 F. 2d 131.

No. 93–5300. HALEY *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–5303. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 93–5304. OKAYFOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 116.

No. 93–5305. PHILLIPS *v.* SOLO/DISCOVERY ET AL. Sup. Ct. Va. Certiorari denied.

No. 93-5306. MASON *v.* BAYER. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 790.

No. 93-5307. MITCHELL *v.* BISHOP. C. A. 6th Cir. Certiorari denied.

No. 93-5308. MAYBERRY *v.* HUDSON. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1547.

No. 93-5309. LONG *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 93-5310. JENKINS *v.* LORSON, CHIEF DEPUTY CLERK. C. A. D. C. Cir. Certiorari denied.

No. 93-5312. BLANKENSHIP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93-5314. RAMOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93-5315. BLANCO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1415.

No. 93-5316. DEMAURO *v.* COLDWELL, BANKER & CO. ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-5317. CROWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93-5318. PHILLIPS *v.* VIRGINIA ET AL. Ct. App. Va. Certiorari denied.

No. 93-5319. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93-5320. HUNTER, AKA DIRKER *v.* AISPURO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 982 F. 2d 344.

No. 93-5321. CORDOBA-ZAPATA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93-5322. DANIELS *v.* UNITED STATES; and
No. 93-5428. GOINES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 750.

No. 93–5323. Boykin *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 270.

No. 93–5324. Aziz, aka Gilliard *v.* Warden, Clinton Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93–5327. Sarit et al. *v.* Drug Enforcement Administration. C. A. 1st Cir. Certiorari denied. Reported below: 987 F. 2d 10.

No. 93–5328. Wilson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 156.

No. 93–5329. Turner *v.* Boswell et al. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 495.

No. 93–5330. Sanders *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 224 Ill. App. 3d 1107, 644 N. E. 2d 532.

No. 93–5332. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 792.

No. 93–5333. James *v.* Sowders, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1216.

No. 93–5334. Glasper *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 239 Ill. App. 3d 1106, 656 N. E. 2d 470.

No. 93–5335. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 93–5336. Gomez, aka Lucho *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 979 F. 2d 212.

No. 93–5337. Lizarraga *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 804.

No. 93–5339. Arellano-Cardenas *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 884.

No. 93–5340. Austin *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93-5341. ADAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93-5342. BLACK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 979 F. 2d 856.

No. 93-5343. CHUBB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1217.

No. 93-5344. MCLEOD *v.* MYERS. Sup. Ct. S. C. Certiorari denied.

No. 93-5346. CARBAJAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 506.

No. 93-5347. WALTON *v.* ARIZONA. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 93-5348. WIKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 325.

No. 93-5349. TRAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 1316.

No. 93-5350. CRANE *v.* LOGLI ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 992 F. 2d 136.

No. 93-5355. ATKINS *v.* DRESSER INDUSTRIES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93-5356. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 506.

No. 93-5359. ARRINGTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 993 F. 2d 913.

No. 93-5360. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93-5362. ECHOLS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 175 Wis. 2d 653, 499 N. W. 2d 631.

No. 93-5363. JACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 93-5364. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 93-5366. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93-5367. WYSINGER *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93-5368. EASTLAND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 760.

No. 93-5371. ESCOFFREY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93-5372. HILL *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 795.

No. 93-5373. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-5375. OJO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93-5376. TAPIA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93-5378. VAUGHN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-5380. GOBER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 93-5383. RAMSEY *v.* OFFICE OF THE STATE ENGINEER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1428.

No. 93-5384. LANGFORD *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 441 Mich. 904, 496 N. W. 2d 291.

No. 93-5385. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 977 F. 2d 551.

No. 93-5386. MYERS *v.* ROWLAND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1157.

No. 93-5387. SEXSTONE *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93–5388. Weaver *v.* Kaye et al. Super. Ct. Pa. Certiorari denied. Reported below: 427 Pa. Super. 656, 625 A. 2d 100.

No. 93–5389. Weaver *v.* Strine et al. Super. Ct. Pa. Certiorari denied. Reported below: 427 Pa. Super. 656, 625 A. 2d 100.

No. 93–5391. Steward *v.* Gwaltney of Smithfield, Ltd. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1539.

No. 93–5392. Liggins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1218.

No. 93–5393. Taylor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 382.

No. 93–5394. Curtis *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 1552.

No. 93–5395. Butz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 982 F. 2d 1378.

No. 93–5396. Bobo *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 524.

No. 93–5397. Dominguez *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 992 F. 2d 678.

No. 93–5398. Green *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 141, 609 N. E. 2d 1253.

No. 93–5399. Almon *v.* Breland et al. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 93–5401. Razo *v.* United States; and
No. 93–5471. Razo, aka Razo-Alvarado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 325.

No. 93–5402. Monroe *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 12 Cal. App. 4th 1174, 16 Cal. Rptr. 2d 267.

No. 93–5404. Bivins *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 93–5405. Royster *v.* Rodriguez et al. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 708, 615 N. E. 2d 224.

No. 93–5406. Reise *v.* Board of Regents of the University of Wisconsin System et al. C. A. 7th Cir. Certiorari denied.

No. 93–5408. Johnson *v.* State Bar of Kansas. Sup. Ct. Kan. Certiorari denied.

No. 93–5409. Kelly *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 493.

No. 93–5410. Whitfield *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5411. Channer *v.* Markowski et al. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 320.

No. 93–5412. Asante *v.* Diller et al. C. A. 2d Cir. Certiorari denied. Reported below: 978 F. 2d 706.

No. 93–5413. Smith *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1210.

No. 93–5414. Young *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 887.

No. 93–5415. Corey *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93–5416. Dalton *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 990 F. 2d 1166.

No. 93–5419. Brewer *v.* Strauss et al. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 770.

No. 93–5421. Mullet *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 93–5422. Anderson *v.* Gibson, Dunn & Crutcher et al. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 571.

No. 93–5423. Calia *v.* Turnbow et al. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 607.

No. 93–5424. Carroll *v.* Gross et al. C. A. 11th Cir. Certiorari denied. Reported below: 984 F. 2d 392.

No. 93–5425. Burt *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 93–5426. Augustin *v.* Wigen, Warden. C. A. 3d Cir. Certiorari denied.

No. 93–5427. Fass *v.* Dalton, Secretary of the Navy. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1258.

No. 93–5429. Hill *v.* Muncy Borough Council et al. C. A. 3d Cir. Certiorari denied.

No. 93–5432. Soloman *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–5433. Siegel *v.* Berkheimer Associates. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 628, 616 A. 2d 710.

No. 93–5434. Murray *v.* Vaughn, Superintendent, State Correctional Institution (and Diagnostic and Classification Center) at Graterford. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 218.

No. 93–5435. Urbaez-Feliz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–5436. Thurmon *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 227.

No. 93–5437. Baird *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 604 N. E. 2d 1170.

No. 93–5438. Ortega *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93–5439. Tafalla-Orbino *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1035.

No. 93-5440. Jackson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93-5442. Fears *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 93-5445. Beckford *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93-5446. Blanchettec *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-5447. Andrews *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93-5448. Mhoon *v.* Hargett, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93-5450. Wirts *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 176 Wis. 2d 174, 500 N. W. 2d 317.

No. 93-5452. Valdez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93-5453. Patton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93-5454. Borowy *v.* Yeakel et al. Ct. App. D. C. Certiorari denied.

No. 93-5456. Gonzalez *v.* Abbott, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 461.

No. 93-5457. Huff *v.* Chapman Design & Construction Co. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1198.

No. 93-5463. Lopez *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 174 Ariz. 131, 847 P. 2d 1078.

No. 93-5465. Martin *v.* Bunnell, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 93-5466. Miller *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 984 F. 2d 1028.

No. 93–5467. Olson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 989 F. 2d 229.

No. 93–5468. Hart *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5469. Gary *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 474.

No. 93–5470. Fitzhugh *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 984 F. 2d 143.

No. 93–5472. Grant *v.* City of New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 320.

No. 93–5473. Bruce *v.* Sutton, Superintendent, Currituck Correctional Center, et al. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1535.

No. 93–5475. Graham *v.* Rollins, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 492.

No. 93–5476. Jensen *v.* Rayl et al. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93–5477. O'Dell *v.* McSpadden et al. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93–5478. Shelton *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 191 App. Div. 2d 976, 595 N. Y. S. 2d 343.

No. 93–5479. Shaw *v.* Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 847 S. W. 2d 768.

No. 93–5480. LeBouef *v.* Whitley, Warden. C. A. 5th Cir. Certiorari denied.

No. 93–5481. Moore *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 93–5482. Mosier *v.* Reynolds, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 507.

No. 93–5483. Jones *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–5484. McPherson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93–5488. Young *v.* Grifo. Sup. Ct. Pa. Certiorari denied.

No. 93–5489. Taliaferro *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–5490. Scott *v.* Morehouse School of Medicine, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 720.

No. 93–5491. Scott *v.* Willson. C. A. 11th Cir. Certiorari denied. Reported below: 980 F. 2d 1447.

No. 93–5492. Grimm *v.* Rosenthal, Attorney General of Virginia. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 492.

No. 93–5493. James *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 187.

No. 93–5494. Peoples *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93–5495. Nickens *v.* Cabana et al. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93–5496. Chavez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1488.

No. 93–5497. Ozbun *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 93–5499. Haislip *v.* Stephan, Attorney General of Kansas, et al. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 1085.

No. 93–5502. Bunyan *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 998 F. 2d 7.

No. 93–5504. Fox et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–5506. Mayer *v.* Brown, Secretary of Veterans Affairs. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1490.

No. 93–5507. Shehee *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1423.

No. 93–5508. Temple *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1236.

No. 93–5509. Vernon *v.* Crutchfield. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5510. Vernon *v.* Marriott Hotel of Albuquerque et al. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5511. Vernon *v.* Stevens et al. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5513. Critsley *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 618 So. 2d 242.

No. 93–5514. Williams *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1218.

No. 93–5515. Washington *v.* Parker, Warden. C. A. 4th Cir. Certiorari before judgment denied.

No. 93–5516. Sicairos *v.* Burns, Warden. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1416, 875 P. 2d 1078.

No. 93–5517. Cortes Cruz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93–5518. Davis *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 635.

No. 93–5519. Carson *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 461.

No. 93–5520. Castro *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1212.

No. 93–5521. Ferrara *v.* Keane, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 403.

No. 93-5523. **Fairchild** *v.* **United States.** C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1139.

No. 93-5524. **Lomprey** *v.* **Wisconsin.** Ct. App. Wis. Certiorari denied. Reported below: 173 Wis. 2d 209, 496 N. W. 2d 172.

No. 93-5525. **Parsons** *v.* **United States.** C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 38.

No. 93-5526. **Nunn** *v.* **United States.** C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1456.

No. 93-5527. **Demarin-Orrego** *v.* **United States.** C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93-5529. **Russell** *v.* **McGinnis, Director, Michigan Department of Corrections, et al.** C. A. 6th Cir. Certiorari denied.

No. 93-5533. **Young** *v.* **United States.** C. A. D. C. Cir. Certiorari denied. Reported below: 995 F. 2d 306.

No. 93-5534. **Washington** *v.* **United States.** C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93-5536. **Curtis** *v.* **United States.** C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93-5537. **Brown** *v.* **United States.** C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93-5541. **Hardwick** *v.* **Hodge.** Sup. Ct. S. C. Certiorari denied.

No. 93-5542. **Jackson** *v.* **United States.** C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 219.

No. 93-5543. **Hill** *v.* **Arizona.** Sup. Ct. Ariz. Certiorari denied. Reported below: 174 Ariz. 313, 848 P. 2d 1375.

No. 93-5545. **Galviz** *v.* **United States.** C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93-5548. **Eason** *v.* **City of Chicago et al.** C. A. 7th Cir. Certiorari denied.

No. 93–5550. Favela Romero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1238.

No. 93–5552. Clay *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 787.

No. 93–5553. Hilling et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1236.

No. 93–5554. George *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 1176.

No. 93–5556. Estes *v.* City of Seattle et al. Ct. App. Wash. Certiorari denied. Reported below: 68 Wash. App. 1039.

No. 93–5557. Hughes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–5558. Gacy *v.* Welborn, Warden, et al. C. A. 7th Cir. Certiorari denied. Reported below: 994 F. 2d 305.

No. 93–5559. Benjamin *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 991 F. 2d 811.

No. 93–5560. Donaldson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 93–5563. Shields *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 220.

No. 93–5564. Morris *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 622 A. 2d 1116.

No. 93–5565. Liebman *v.* Liebman. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 93–5567. Navarro Garcia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–5569. Guzman *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 93–5571. Ortiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93–5572. AVANT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 884.

No. 93–5573. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 427.

No. 93–5575. TYLER *v.* UNITED STATES; and
No. 93–5576. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–5587. QUALTIERI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 219.

No. 93–5588. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1026.

No. 93–5589. DANIEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1213.

No. 93–5590. BENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 802.

No. 93–5591. KENNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 992 F. 2d 32.

No. 93–5595. BERNFELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 976 F. 2d 738.

No. 93–5597. HUEBNER *v.* FARMERS STATE BANK, GRAFTON, IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 1222.

No. 93–5598. CARBAJAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93–5599. STEVENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93–5602. HARDY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93–5609. MAYLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 977 F. 2d 569.

No. 93–5610. PINTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 984 F. 2d 376.

No. 93–5611. NEWSOME *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–5612. PINKNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 232.

No. 93–5613. RUTLEDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93–5614. OSORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93–5615. PIORECKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93–5618. LOYD *v.* LORD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1211.

No. 93–5620. SPOERLEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93–5623. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93–5625. FRIDAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1222.

No. 93–5627. BRUCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 984 F. 2d 928.

No. 93–5638. CATES *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 93–5640. VALENCIA-VARGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 887.

No. 93–5643. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 982 F. 2d 474.

No. 93–5645. BRAVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 884.

No. 93–5647. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 469.

No. 93–5651. KIESTLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93-5653. KELLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 880.

No. 93-5655. CARRAWAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 395.

No. 93-5662. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 196.

No. 93-5665. COMBS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-5667. SCHULTZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1214.

No. 93-5668. YARBROUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 802.

No. 93-5670. WINCHESTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-5672. BELLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-5674. SCHALLOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 196.

No. 93-5675. WALTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 235.

No. 93-5676. YARBROUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1248.

No. 93-5677. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 887.

No. 93-5678. BAZUAYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 791.

No. 93-5681. WHITAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93-5686. PEREZ ZAMBRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93-5687. SALAHUDDIN *v.* JONES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 447.

No. 93-5690. Lovett *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-5693. Melendez *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93-5694. Oiler *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93-5695. Rose *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 617 So. 2d 291.

No. 93-5704. Plumley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1140.

No. 93-5705. Perkins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 994 F. 2d 1184.

No. 93-5707. Rodgers *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93-5708. Momeni *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 493.

No. 93-5710. Johnson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-5713. Hall *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93-5729. Taylor *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 628 A. 2d 643.

No. 93-5736. Hai Van Lo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 545.

No. 93-5737. Randolph *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1064.

No. 93-5744. Arellanes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1261.

No. 93-5745. Thompson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 93-5748. Ischy *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93–5749. ANDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5751. AUSTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93–5754. HORNICK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 303.

No. 93–5757. FEURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93–5758. TURNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1357.

No. 93–5761. PAYTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5763. OSORIO-GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5764. LIBUTTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1079.

No. 93–5765. MILLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 480.

No. 93–5769. LUMER *v.* LEHMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1003.

No. 93–5777. CHUKWURAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93–5780. DELAY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 93–5786. ENRIQUEZ, AKA BARAZA-BARAZA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1249.

No. 93–5830. BALL *v.* CARR. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 92–1678. ALABAMA *v.* CALDWELL. Ct. Crim. App. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 611 So. 2d 1149.

No. 92–1823. Johnson, Special Administratrix of the Estate of Johnson, Deceased *v.* Ross, Representative of the Estate of Ross, Deceased, et al. C. A. 7th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 92–1882. Texas *v.* De Freece. Ct. Crim. App. Tex. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 848 S. W. 2d 150.

No. 92–1933. Patuxent Institution Board of Review *v.* Hancock. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 329 Md. 556, 620 A. 2d 917.

No. 92–2022. City of Kansas City, Missouri *v.* Tolefree. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 980 F. 2d 1171.

No. 93–69. Alabama *v.* Johnson. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 620 So. 2d 709.

No. 93–147. Department of Transportation and Development of Louisiana et al. *v.* Cosey. Ct. App. La., 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 93–196. Borg, Warden *v.* Turk. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 992 F. 2d 1220.

No. 93–234. Michigan *v.* Marsh. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 92–1747. Appell *v.* Reno, Attorney General of the United States. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition. Reported below: 984 F. 2d 1255.

No. 93–53. Phillips, to be Appointed Personal Representative of the Estate of Phillips *v.* Heine, Conservator for Terrell, Disappeared. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 984 F. 2d 489.

No. 93–131. ASHTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 991 F. 2d 819.

No. 93–5089. SIMPSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 992 F. 2d 1224.

No. 93–5390. CAMPBELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 993 F. 2d 913.

No. 93–5747. STEVENS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 990 F. 2d 1378.

No. 92–1798. RAKESTRAW ET AL. *v.* AIR LINE PILOTS ASSN., INTERNATIONAL, ET AL. C. A. 7th Cir. Motion of National Right to Work Legal Defense Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 981 F. 2d 1524.

No. 92–1806. MEYER *v.* LELSZ ET AL. C. A. 5th Cir. Motion of petitioner to strike brief in opposition of John Lelsz et al. denied. Motion of petitioner for sanctions against Garth Corbett et al. denied. Motion of petitioner to strike brief in opposition of Texas denied. Motion of petitioner for sanctions against Texas denied. Certiorari denied. Reported below: 983 F. 2d 1061.

No. 92–1810. CREDITORS OF MICRO-TIME MANAGEMENT SYSTEMS, INC. *v.* ALLARD & FISH, P. C., ET AL.; and

No. 92–1897. MICRO-TIME MANAGEMENT SYSTEMS, INC., ET AL. *v.* ALLARD & FISH, P. C., ET AL. C. A. 6th Cir. Motion of respondents for award of damages denied. Certiorari denied. Reported below: 983 F. 2d 1067.

No. 92–1925. CHICA *v.* LEE. C. A. 8th Cir. Motion of Securities Industry Association, Inc., for leave to file a brief as *amicus* *curiae* granted. Certiorari denied. Reported below: 983 F. 2d 883.

No. 92–1934. J. M. *v.* V. C. Sup. Ct. N. J. Motions of World Federation of Doctors Who Respect Human Life et al., Concerned Women for America et al., and University Faculty for Life et al. for leave to file briefs as *amici curiae* granted. Motion of respondent for sanctions denied. Certiorari denied.

No. 92–1947. WOODS *v.* AT&T INFORMATION SYSTEMS ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 979 F. 2d 213.

No. 92–2010. AT&T FAMILY FEDERAL CREDIT UNION ET AL. *v.* FIRST NATIONAL BANK & TRUST CO. ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 988 F. 2d 1272.

No. 93–9. WASHINGTON SUBURBAN SANITARY COMMISSION *v.* CAE-LINK CORP. ET AL. Ct. App. Md. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 330 Md. 115, 622 A. 2d 745.

No. 92–1982. HILLCREST MEDICAL CENTER *v.* SCRIBNER. Ct. App. Okla. Motions of American Tort Reform Association and American Hospital Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 92–1987. CARNIVAL CRUISE LINES, INC. *v.* MORTON ET VIR. C. A. 9th Cir. Motion of International Council of Cruise Lines for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 984 F. 2d 289.

No. 92–2003. TIMES PUBLISHING CO. *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Motion of petitioner to enlarge the record denied. Motion of petitioner to further enlarge the record denied. Certiorari denied. Reported below: 987 F. 2d 708.

No. 92–2004. OHIO *v.* DENUNE ET AL. Ct. App. Ohio, Butler County. Motion of Ohio Prosecuting Attorneys Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 82 Ohio App. 3d 497, 612 N. E. 2d 768.

No. 92–2012. COCA-COLA BOTTLING COMPANY OF ELIZABETHTOWN, INC., ET AL. *v.* COCA-COLA CO.; and

No. 92–2055. COCA-COLA BOTTLING COMPANY OF SHREVEPORT, INC., ET AL. *v.* COCA-COLA CO. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of these petitions. Reported below: No. 92–2012, 988 F. 2d 386; No. 92–2055, 988 F. 2d 414.

No. 93–128. STOLTZ, SPECIAL ADMINISTRATOR OF THE ESTATE OF STOLTZ, DECEASED *v.* FIRST PYRAMID LIFE INSURANCE COMPANY OF AMERICA ET AL. Sup. Ct. Ark. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 311 Ark. 313 and 312 Ark. 95, 843 S. W. 2d 842.

No. 92–2016. JONES *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to correct clerical errors and omissions in the petition for writ of certiorari denied. Certiorari denied. Reported below: 977 F. 2d 574.

No. 92–8206. DUNLAP-MCCULLER *v.* RIESE ORGANIZATION ET AL. C. A. 2d Cir. Motion of NAACP Legal Defense & Educational Fund, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 980 F. 2d 153.

No. 92–8832. KIRKENDALL *v.* LARA ET AL. C. A. 5th Cir. Motion of petitioner for sanctions denied. Certiorari denied. Reported below: 987 F. 2d 770.

No. 93–4. CITY OF CHICAGO ET AL. *v.* BILLISH ET AL. C. A. 7th Cir. Motions of National League of Cities et al., Chicago Lawyers' Committee for Civil Rights Under Law et al., and National Urban League et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 989 F. 2d 890.

No. 93–17. PIPER AIRCRAFT CORP. *v.* CLEVELAND, BY AND THROUGH THE CONSERVATOR OF HIS ESTATE, CLEVELAND. C. A. 10th Cir. Motions of Aircraft Owners and Pilots Association and Aerospace Industries Association of America et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 985 F. 2d 1438.

No. 93–63. L. A. GEAR, INC. *v.* THOM MCAN SHOE CO. ET AL. C. A. Fed. Cir. Motions of International Trademark Association and Athletic Footwear Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 988 F. 2d 1117.

No. 93–85. WHEELABRATOR CORP. *v.* BIDLACK ET AL. C. A. 7th Cir. Motion of American Automobile Manufacturers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 993 F. 2d 603.

No. 93–123. VASQUEZ, WARDEN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA (MURTISHAW, REAL PARTY IN INTEREST). C. A. 9th Cir. Motion of respondent David Leslie Murtishaw for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 93–230. MCGOWAN *v.* CROSS ET AL. C. A. 4th Cir. Motion of petitioner for award of costs and sanctions denied. Certiorari denied. Reported below: 991 F. 2d 790.

Rehearing Denied

No. 92–1590. KURZ ET AL. *v.* MAIRONE ET AL., 508 U. S. 912;
No. 92–1764. POLYAK *v.* BUFORD EVANS & SONS ET AL.; POLYAK *v.* BOSTON ET AL.; IN RE POLYAK, 508 U. S. 961; and
No. 92–7471. WILSON *v.* KENTUCKY, 507 U. S. 1034. Petitions for rehearing denied.

No. 91–1526. ALEXANDER *v.* UNITED STATES, 509 U. S. 544. Petition for rehearing denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

No. 92–8264. PETTITT *v.* WESTPORT SAVINGS BANK ET AL., 508 U. S. 929. Motion for leave to file petition for rehearing denied.

OCTOBER 5, 1993

Miscellaneous Orders

No. A–300. KOON *v.* UNITED STATES. Application for release on bail pending appeal, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. A–308. GUINAN *v.* DELO, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Application for stay of execution of sentence of death, presented to JUSTICE BLACKMUN, and by him referred to the Court, denied. JUSTICE BLACKMUN would grant the application for stay of execution.

JUSTICE GINSBURG, concurring.

I concur in the Court's denial of a stay of execution. I do so based upon the conclusions of the Court of Appeals for the Eighth Circuit, reached after careful review of Guinan's very recent submissions. As described by the Eighth Circuit panel, those submissions, presented 11 years after Guinan's trial, consist of statements "inconsistent with previous sworn testimony of the same witness, in some cases inconsistent with each other, inconsistent with the great bulk of evidence adduced at Guinan's trial, . . . on occasion inconsistent with defenses Guinan previously has asserted[,] . . . [and in some cases] not new at all." *Guinan* v. *Delo*, 7 F. 3d 111, 112 (1993).

OCTOBER 6, 1993

Dismissal Under Rule 46

No. 92–2002. CHURCH OF SCIENTOLOGY WESTERN UNITED STATES ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 973 F. 2d 715.

OCTOBER 8, 1993

Dismissal Under Rule 46

No. 93–330. BRIMELOW ET AL. *v.* BENFIELD. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1.

OCTOBER 12, 1993

Certiorari Granted—Vacated and Remanded

No. 93–5258. BREAUX *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Shalala* v. *Schaefer*, 509 U. S. 292 (1993). Reported below: 1 F. 3d 1237.

Certiorari Dismissed

No. 92–7794. PASCH *v.* ILLINOIS. Sup. Ct. Ill. [Certiorari granted, 508 U. S. 959.] The Court is advised that the petitioner died in Pontiac, Ill., on September 10, 1993. The Court's order granting the petition for writ of certiorari therefore is vacated, and the petition for writ of certiorari is dismissed.

Miscellaneous Orders. (See also Nos. 92–8788, 92–8792, 92–8888, 92–8905, 92–8906, 92–9018, 92–9101, and 93–5430, *ante*, p. 1; and Nos. 92–8933, 92–8934, 92–9228, 93–5045, 93–5127, 93–5128, 93–5129, 93–5252, 93–5358, and 93–5596, *ante*, p. 4.)

No. ———. RAMOUNDOS *v.* MULLEN. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ———. HALL *v.* ARKANSAS. Motion of petitioner for leave to proceed *in forma pauperis* denied.

No. A–292. SCHAPIRO *v.* SCHAPIRO. Ct. Common Pleas of Montgomery County, Pa. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1282. IN RE DISBARMENT OF KEITHLEY. Disbarment entered. [For earlier order herein, see 509 U. S. 936.]

No. 92–1450. WATERS ET AL. *v.* CHURCHILL ET AL. C. A. 7th Cir. [Certiorari granted, 509 U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92–1479. MCDERMOTT, INC. *v.* AMCLYDE ET AL. C. A. 5th Cir. [Certiorari granted, 509 U. S. 921.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92–1625. INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA, ET AL. *v.* BAGWELL ET AL. Sup. Ct. Va. [Certiorari granted, 508 U. S. 949.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–241. JAFFE *v.* SNOW ET AL. Dist. Ct. App. Fla., 5th Dist. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 93–5458. IN RE KRUSE. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 2, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule

33 of the Rules of this Court. JUSTICE GINSBURG would deny the petition for writ of mandamus.

JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), I would deny the petition for writ of mandamus without reaching the merits of the motion to proceed *in forma pauperis.*

No. 93–5722. RUPP *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 2, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court. JUSTICE GINSBURG would deny the petition for writ of certiorari.

JUSTICE BLACKMUN and JUSTICE STEVENS, dissenting.

For the reasons expressed in *Brown* v. *Herald Co.*, 464 U. S. 928 (1983), we would deny the petition for writ of certiorari without reaching the merits of the motion to proceed *in forma pauperis.*

No. 93–5882. IN RE WINSTON. Petition for writ of habeas corpus denied.

No. 93–5626. IN RE CORLEY. Petition for writ of mandamus denied.

No. 93–266. IN RE STONE, INDIVIDUALLY AND AS TRUSTEE FOR ROBERT L. STONE, INC., DEFINED BENEFIT PENSION PLAN, ET AL.; and

No. 93–5733. IN RE CAMPBELL. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 92–1956. CONSOLIDATED RAIL CORPORATION *v.* GOTTSHALL; and CONSOLIDATED RAIL CORPORATION *v.* CARLISLE. C. A. 3d Cir. Certiorari granted. Reported below: 988 F. 2d 355 (first case); 990 F. 2d 90 (second case).

No. 92–1812. UNITED STATES *v.* ALVAREZ-SANCHEZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma* *pauperis* granted. Certiorari granted. Reported below: 975 F. 2d 1396.

No. 93–5209. CUSTIS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 988 F. 2d 1355.

Certiorari Denied

No. 92–1938. PAPAS ET AL. *v.* ZOECON CORP. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 516.

No. 92–1970. REM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 984 F. 2d 806.

No. 92–1995. ADVANCE CHEMICAL CO. ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 982 F. 2d 1436.

No. 92–8405. TAYLOR *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 610 So. 2d 644.

No. 92–8562. MCGOWEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92–8996. BROKAW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 951.

No. 92–9012. BOLDUC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 978 F. 2d 964.

No. 92–9054. POWELL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 92–9182. MCMULLEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 989 F. 2d 603.

No. 93–14. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 627.

No. 93–50. BISHOP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 772.

No. 93–60. DYE ET AL. *v.* ESPY, SECRETARY OF AGRICULTURE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 1184.

No. 93–71. Nelson et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 988 F. 2d 798.

No. 93–86. Parkins, Administrator of the Estate of Parkins, Deceased *v.* Mobay Corp. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1218.

No. 93–100. National Business Factors, Inc. *v.* Rollins et al. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 803.

No. 93–102. Mathes *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–105. Blue Cross & Blue Shield of Maryland, Inc. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 718.

No. 93–109. Serrano *v.* United States; and
No. 93–5403. Wilson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 575.

No. 93–125. Renneisen et al. *v.* American Airlines, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 990 F. 2d 918.

No. 93–155. Southards et ux. *v.* Motel Management Co., nka B & M Management Co., Inc., et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 610 So. 2d 524.

No. 93–187. Kahn, Trustee for Hemingway Transport, Inc., et al. *v.* Juniper Development Group et al. C. A. 1st Cir. Certiorari denied. Reported below: 993 F. 2d 915.

No. 93–214. Bryant et al. *v.* Klein et al. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 1344.

No. 93–216. Slawek *v.* Gateway Broadcasting Corp. et al. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 489.

No. 93–217. Taylor Investment, Ltd., et al. *v.* Upper Darby Township et al. C. A. 3d Cir. Certiorari denied. Reported below: 983 F. 2d 1285.

No. 93–220. Duphar, B. V. *v.* Tobin. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 528.

No. 93–221. ECHARTE, A MINOR, BY AND THROUGH HER PARENTS AND NATURAL GUARDIANS, ECHARTE ET AL. *v.* UNIVERSITY OF MIAMI, DBA UNIVERSITY OF MIAMI SCHOOL OF MEDICINE. Sup. Ct. Fla. Certiorari denied. Reported below: 618 So. 2d 189.

No. 93–223. MILLER, ADMINISTRATOR OF THE ESTATE OF MOLINE *v.* AMERICAN PRESIDENT LINES, LTD., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 1450.

No. 93–227. EMPLOYERS INSURANCE OF WAUSAU *v.* CELOTEX CORP. C. A. 11th Cir. Certiorari denied.

No. 93–228. TEXAS FRUIT PALACE, INC. *v.* CITY OF PALESTINE. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 842 S. W. 2d 319.

No. 93–229. DIXON ET AL. *v.* CSX TRANSPORTATION, INC. C. A. 4th Cir. Certiorari denied. Reported below: 990 F. 2d 1440.

No. 93–233. CALVENTO *v.* BELLI & SABIH ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–236. AMERICAN SECURITY BANK, N. A., ET AL. *v.* DEMPSEY SUPPLY CORP. Sup. Ct. Va. Certiorari denied.

No. 93–237. MALONEY *v.* UNITED STATES ET AL. Ct. App. Wis. Certiorari denied. Reported below: 174 Wis. 2d 601, 501 N. W. 2d 470.

No. 93–238. GERRITSEN *v.* CITY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 570.

No. 93–239. BARTLEY *v.* HANDELSMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 794.

No. 93–240. TFL, INC., ET AL. *v.* WALHOUT, TRUSTEE OF TUCKER FREIGHT LINES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 796.

No. 93–243. JAMES ET AL. *v.* CITY OF LIVONIA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 560.

No. 93–244. MARLOWE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–245. Rinier et al. *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 218.

No. 93–246. Rupp et al. *v.* County of San Diego et al. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–247. DeFazio *v.* Martinez et al. C. A. 9th Cir. Certiorari denied.

No. 93–250. National Educational Support Systems, Inc. *v.* Autoskill, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 994 F. 2d 1476.

No. 93–251. Guidry et al. *v.* Mississippi Utility, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93–252. Sandoval *v.* Acevedo, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 145.

No. 93–258. Schloesser *v.* Kansas Department of Health and Environment et al. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 806.

No. 93–261. Arvida Realty Sales, Inc., et al. *v.* Seaman. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 543.

No. 93–262. Buell *v.* Security General Life Insurance Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 987 F. 2d 1467.

No. 93–268. Cutting et al. *v.* Jerome Foods, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1293.

No. 93–270. Geiger *v.* New York Life Insurance Co. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1427.

No. 93–273. Hunter Country Club, Inc. *v.* Bourne Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 990 F. 2d 934.

No. 93–275. Wiley *v.* Supreme Court of Colorado et al. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 1552.

No. 93–276. GANDOTRA ET UX. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 11 Cal. App. 4th 1355, 14 Cal. Rptr. 2d 896.

No. 93–279. WITTEKAMP *v.* GULF & WESTERN, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 991 F. 2d 1137.

No. 93–282. SMART *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 136 N. H. 639, 622 A. 2d 1197.

No. 93–283. FONAR CORP. *v.* DECCAID SERVICES, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–285. LEVY *v.* UNIVERSITY OF CINCINNATI ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 84 Ohio App. 3d 342, 616 N. E. 2d 1132.

No. 93–286. DOUGLASS ET AL. *v.* FRONTIER FEDERAL SAVINGS & LOAN ASSN. Sup. Ct. Idaho. Certiorari denied. Reported below: 123 Idaho 808, 853 P. 2d 553.

No. 93–290. SNYDER INDUSTRIES, INC. *v.* HEIL CO. C. A. Fed. Cir. Certiorari denied. Reported below: 989 F. 2d 1203.

No. 93–296. CIAMARICONE *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 93–299. LIBERTARIAN PARTY OF MAINE ET AL. *v.* DIAMOND, SECRETARY OF STATE OF MAINE. C. A. 1st Cir. Certiorari denied. Reported below: 992 F. 2d 365.

No. 93–300. SOUTHWEST WATER WELLS, INC. *v.* GARNEY COS., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 93–304. SANFORD REDMOND, INC. *v.* MID-AMERICA DAIRYMEN, INC. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1534.

No. 93–308. DOCKTER *v.* AETNA LIFE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 118.

No. 93–312. STEVENS *v.* MINNESOTA STATE BOARD OF BAR EXAMINERS. Sup. Ct. Minn. Certiorari denied. Reported below: 500 N. W. 2d 491.

No. 93-323. LEWIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 993 F. 2d 1530.

No. 93-340. GARRINGER *v.* UNITED STEELWORKERS OF AMERICA. C. A. 7th Cir. Certiorari denied.

No. 93-344. PELLETIER *v.* ZWEIFEL. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 716.

No. 93-347. LOWRANCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 1509.

No. 93-352. VREELAND *v.* TOWNSEND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 797.

No. 93-354. LOOMIS *v.* WALLIS & SHORT, P. C. Sup. Ct. Tex. Certiorari denied.

No. 93-368. DUNNING *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 789.

No. 93-375. OWENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1159.

No. 93-383. ROJAS-HOLGUIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 707.

No. 93-396. KLINGENSTEIN *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 330 Md. 402, 624 A. 2d 532.

No. 93-398. CHARLTON *v.* BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 174 Wis. 2d 844, 498 N. W. 2d 380.

No. 93-399. FERGUSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93-407. IN RE GARRINGER. C. A. 7th Cir. Certiorari denied.

No. 93-5004. BARRON-DIOSDADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93-5079. OLSON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 1 F. 3d 1252.

No. 93–5092. Manning *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1252.

No. 93–5132. Rousseau *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 855 S. W. 2d 666.

No. 93–5180. Stewart *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1268.

No. 93–5210. Majeno *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–5226. Hardy *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–5264. Meeks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 987 F. 2d 575.

No. 93–5283. Garza-Flores *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1253.

No. 93–5288. Atchley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 916.

No. 93–5292. Tabora *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 93–5294. Centeno *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 986 F. 2d 1415.

No. 93–5326. Woods *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–5331. Stefanko *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5352. Zapien *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 4th 929, 846 P. 2d 704.

No. 93–5353. Vincent *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 792.

No. 93–5357. Clements *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 417.

No. 93–5379. Han Sho Wei *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93–5441. POLEWSKY *v.* NATIONAL RAILROAD PASSENGER CORPORATION. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93–5443. GORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93–5512. SCHWARZ *v.* CHURCH OF SCIENTOLOGY ET AL. Sup. Ct. Utah. Certiorari denied.

No. 93–5531. WRIGHT *v.* KAISER, CHIEF OF OPERATIONS, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 807.

No. 93–5538. DULOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–5549. HANCE *v.* ZANT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 2d 1180.

No. 93–5561. TEDFORD *v.* HEPTING ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 990 F. 2d 745.

No. 93–5566. LUNSFORD *v.* LEE, SUPERINTENDENT, CALEDONIA CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1537.

No. 93–5577. SCHULTZ *v.* COPPLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–5578. HOLLAND *v.* VAUGHN, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 93–5579. FRIPP *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 426 Pa. Super. 636, 620 A. 2d 1233.

No. 93–5580. GARCIA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 93–5582. TAYLOR *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–5583. SWAIN *v.* DETROIT BOARD OF EDUCATION. Ct. App. Mich. Certiorari denied.

No. 93-5584. GUNTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 858 S. W. 2d 430.

No. 93-5592. AZIZ *v.* GROOSE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 608.

No. 93-5593. CONBOY *v.* MONTGOMERY COUNTY, MARYLAND, GOVERNMENT. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 787.

No. 93-5601. HARBOLD *v.* INDIANA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1216.

No. 93-5603. WHITE *v.* INTERNATIONAL UNION PLANT GUARD WORKERS, LOCAL NO. 166. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 93-5606. ALLEN *v.* COWLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 1222.

No. 93-5616. MCGOWAN *v.* SOWDERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1547.

No. 93-5617. LOYD *v.* GRANT. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1211.

No. 93-5624. WHITSON *v.* HILLHAVEN WEST, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 844.

No. 93-5628. STANLEY *v.* WHITE ET AL. C. A. 8th Cir. Certiorari denied.

No. 93-5629. SHIMEK *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 610 So. 2d 632.

No. 93-5630. GUTIERREZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-5633. O'DONNELL *v.* AMERICAN CAREER TRAINING CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 93-5634. ALIFF *v.* DITRAPANO ET AL. Cir. Ct. Mercer County, W. Va. Certiorari denied.

No. 93-5635. COLEMAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 610 So. 2d 1283.

No. 93-5637. ADKINS *v.* RATELLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 93-5639. SWAIN *v.* DECATUR FEDERAL SAVINGS & LOAN ASSN. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93-5641. THOMAS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 618 So. 2d 155.

No. 93-5648. BARKER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93-5649. BROOKS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 93-5650. GRAVES *v.* WORLD OMNI FINANCIAL CORP. Ct. App. Ga. Certiorari denied. Reported below: 206 Ga. App. XXIX.

No. 93-5652. GRIFFIN *v.* COOPER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 842.

No. 93-5654. GALETKA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 974 F. 2d 1345.

No. 93-5656. WANTON *v.* MANN, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 93-5658. ROBICHAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 565.

No. 93-5661. NICKERSON *v.* PEARSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 93-5664. FRANZEN *v.* MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 93-5671. CARROTHERS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 851 S. W. 2d 1.

No. 93-5673. BLOUNT *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1532.

No. 93–5680. VANCE *v.* HAVENS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–5684. STEPHENSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 424 Pa. Super. 650, 617 A. 2d 393.

No. 93–5685. SPENCER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 995 F. 2d 10.

No. 93–5688. WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–5689. WARD *v.* DEMOSTHENES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1230.

No. 93–5697. LOSACCO *v.* F. D. RICH CONSTRUCTION CO., INC. C. A. 1st Cir. Certiorari denied. Reported below: 992 F. 2d 382.

No. 93–5698. RAMAGE ET AL. *v.* VILLINES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93–5709. HERRON *v.* RATELLE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1258.

No. 93–5714. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93–5719. NEAL *v.* MARYLAND DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT. Ct. App. Md. Certiorari denied. Reported below: 330 Md. 155, 622 A. 2d 1196.

No. 93–5720. MARTINEZ *v.* POOLE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93–5721. QUARLES *v.* SCUDERI ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–5723. MCCLINTOCK *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 93–5725. VOLLBRECHT *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 175 Wis. 2d 625, 502 N. W. 2d 283.

No. 93–5727. Casteel, aka Al Ghashiyah (Kahn) *v.* Kolb et al. Ct. App. Wis. Certiorari denied. Reported below: 176 Wis. 2d 440, 500 N. W. 2d 400.

No. 93–5734. Schwarz *v.* Church of Scientology International. C. A. 9th Cir. Certiorari denied.

No. 93–5735. Bilal *v.* Lockhart, Director, Arkansas Department of Correction, et al. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 643.

No. 93–5740. Davis *v.* McWherter et al. C. A. 6th Cir. Certiorari denied.

No. 93–5741. Bialen *v.* Mannesmann Demag Corp. et al. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1421.

No. 93–5759. Corn *v.* Caudill et al. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 499.

No. 93–5766. Reidt *v.* United States Department of Health and Human Services et al. C. A. 9th Cir. Certiorari denied.

No. 93–5771. Wright *v.* Blanchard et al. C. A. 6th Cir. Certiorari denied.

No. 93–5772. Cherry *v.* Ratelle, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 93–5773. DeRosa *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 187 App. Div. 2d 980, 591 N. Y. S. 2d 108.

No. 93–5774. Camarena *v.* California Department of Corrections et al. C. A. 9th Cir. Certiorari denied.

No. 93–5775. DeAlbuquerque *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 93–5779. Casteel *v.* McCaughtry, Warden, et al. Sup. Ct. Wis. Certiorari denied. Reported below: 176 Wis. 2d 571, 500 N. W. 2d 277.

No. 93–5782. Torres *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 220.

No. 93–5787. Garcia *v.* Alaska. Ct. App. Alaska. Certiorari denied.

No. 93–5788. Gaskin *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 615 So. 2d 679.

No. 93–5789. Happ *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 618 So. 2d 205.

No. 93–5790. Floyd *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 1237.

No. 93–5795. Armstrong *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93–5797. Booker *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 93–5801. Ellis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–5802. Gibson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93–5805. Robinson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93–5806. Paschall *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 972.

No. 93–5808. Pugh *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 314.

No. 93–5809. Stokes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–5816. Condo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 93–5821. Koroma *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93–5827. Hernandez *v.* United States; and
No. 93–5840. Jiminez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 1020.

No. 93–5829. Villanueva-Hernandez *v.* United States; and

No. 93–5863. Garrido *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 808.

No. 93–5831. Uppole *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 228 Ill. App. 3d 281, 591 N. E. 2d 898.

No. 93–5832. Villarreal *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 221.

No. 93–5833. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93–5837. Anderson *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–5844. Commander et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93–5847. Nwanze *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–5849. Landers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1064.

No. 93–5851. Samuels *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93–5852. Tippett *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5854. Pugh *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 222.

No. 93–5857. Garza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 171.

No. 93–5860. Thomas *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 987 F. 2d 1298.

No. 93–5865. Lambert *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 1006.

No. 93–5869. Williams *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 507.

No. 93–5871. Wright *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5872. Dominguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 222.

No. 93–5875. Valenzuela *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 221.

No. 93–5876. Mejia-Alarcon *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 982.

No. 93–5886. Prikakis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93–5887. McDougal *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93–5888. Robles *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93–5889. Newsome *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93–5890. Landrigan *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 1, 859 P. 2d 111.

No. 93–5898. Pierce *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93–5899. Escobar *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 986.

No. 93–5902. Gilliam *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 994 F. 2d 97.

No. 93–5907. Mearis *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93–5912. Haynie *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–5914. Evans *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 994 F. 2d 317.

No. 93–5917. Hogg *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–5919. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 1 F. 3d 727.

No. 93–5926. SCHIRALDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–5931. MURPHY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 246 Va. 136, 431 S. E. 2d 48.

No. 93–5932. PINKERTON *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1157.

No. 93–5936. MCLEOD *v.* CENTRAL SOYA CO., INC. Sup. Ct. S. C. Certiorari denied.

No. 93–5940. FRYDENLUND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 822.

No. 93–5955. SALAMANCA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 629.

No. 93–5961. BELLRICHARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 1318.

No. 92–2025. DOE *v.* WOOLSEY, DIRECTOR OF CENTRAL INTELLIGENCE. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 981 F. 2d 1316.

No. 93–222. MCCOO *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

No. 93–212. HIGHLAND FEDERAL SAVINGS & LOAN ASSN. ET AL. *v.* CALIFORNIA, BY THE CITY OF LOS ANGELES, ET AL. Ct. App. Cal., 2d App. Dist. Motion of Savings and Community Bankers of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 14 Cal. App. 4th 1692, 19 Cal. Rptr. 2d 555.

No. 93–255. CARRIE BEVERAGE INC. *v.* GILBERT/ROBINSON, INC. C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 989 F. 2d 985.

No. 93–274. GOLDEN GATES HEIGHTS INVESTMENTS *v.* CITY AND COUNTY OF SAN FRANCISCO. Ct. App. Cal., 1st App. Dist.

Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 14 Cal. App. 4th 1203, 18 Cal. Rptr. 2d 467.

Rehearing Denied

No. 92–806. COSSETT ET UX. *v.* FEDERAL JUDICIARY ET AL., 506 U. S. 1052;

No. 92–8212. HUNTER *v.* MISSOURI, 509 U. S. 926; and

No. 92–8583. JONES *v.* PILLSBURY CO., 509 U. S. 910. Petitions for rehearing denied.

OCTOBER 15, 1993

Dismissal Under Rule 46

No. 93–5374. MADISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 990 F. 2d 178.

OCTOBER 18, 1993

Miscellaneous Orders

No. ———. BLAKEY *v.* USS IOWA ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ———. RETTIG ET AL. *v.* OHIO ET AL. Motion to direct the Clerk to file motion for leave to file bill of complaint denied.

No. D–1286. IN RE DISBARMENT OF NEDER. Disbarment entered. [For earlier order herein, see 509 U. S. 937.]

No. D–1290. IN RE DISBARMENT OF LEATHERS. Disbarment entered. [For earlier order herein, see 509 U. S. 940.]

No. D–1315. IN RE DISBARMENT OF HUTCHESON. It is ordered that Kent Hutcheson, of Nauvoo, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1316. IN RE DISBARMENT OF BAITY. It is ordered that James Wallace Baity, of Concord, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1317. In re Disbarment of Casalino. It is ordered that Leonard Louis Casalino, of Upper Marlboro, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 8, Orig. Arizona *v.* California et al. Memorandum Opinion and Order No. 14 of the Special Master received and ordered filed. Exceptions to the opinion and order, with supporting briefs, may be filed by the parties within 45 days. Reply briefs, if any, may be filed by the parties within 30 days. [For earlier order herein, see, *e. g.*, 498 U. S. 964.]

No. 109, Orig. Oklahoma et al. *v.* New Mexico. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $32,539.99 for the period September 25, 1992, through September 30, 1993, to be paid one-third by each party. [For earlier order herein, see, *e. g.*, 509 U. S. 919.]

No. 93–5717. In re Newtop; and
No. 93–5728. In re Tyler et al. Petitions for writs of mandamus denied.

No. 93–5813. In re Damian. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–263. Kokkonen *v.* Guardian Life Insurance Company of America. C. A. 9th Cir. Certiorari granted. Reported below: 993 F. 2d 883.

No. 93–284. Security Services, Inc. *v.* Kmart Corp. C. A. 3d Cir. Certiorari granted. Reported below: 996 F. 2d 1516.

No. 93–289. Dalton, Secretary of the Navy, et al. *v.* Specter et al. C. A. 3d Cir. Certiorari granted. Reported below: 995 F. 2d 404.

Certiorari Denied

No. 92–2045. Smith et al. *v.* Shalala, Secretary of Health and Human Services; and Clayborn *v.* Shalala, Secretary of Health and Human Services. C. A. 8th Cir.

Certiorari denied. Reported below: 986 F. 2d 232 (first case) and 502 (second case).

No. 92–8922. Hill *v.* Zant, Warden. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 815, 425 S. E. 2d 858.

No. 93–29. Appleby et al. *v.* Sepulveda. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 2d 1413.

No. 93–66. Hamel *v.* President's Commission on Executive Exchange. C. A. Fed. Cir. Certiorari denied. Reported below: 987 F. 2d 1561.

No. 93–122. Dano Resource Recovery, Inc. *v.* District of Columbia. Ct. App. D. C. Certiorari denied. Reported below: 620 A. 2d 1346.

No. 93–130. Meyer *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 194.

No. 93–172. Globe International, Inc. *v.* Peoples Bank & Trust Company of Mountain Home, Conservator of Estate of Mitchell. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 607.

No. 93–242. Schmuck *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 121 Wash. 2d 373, 850 P. 2d 1332.

No. 93–295. Say & Say et al. *v.* Los Angeles County Superior Court et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–297. Metcalf *v.* FELEC Services et al. Sup. Ct. Alaska. Certiorari denied.

No. 93–298. Carr *v.* Axelrod, Commissioner of Health of New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 93–301. Perry et al. *v.* Perkins, Executor of the Estate of Cobb, et al. Sup. Ct. Ky. Certiorari denied.

No. 93–302. Payless Wholesale Distributor, Inc., et al. *v.* Alberto Culver (P. R.) Inc. et al. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 570.

No. 93-306. Williams *v.* First Union National Bank of Georgia. C. A. 11th Cir. Certiorari denied. Reported below: 974 F. 2d 1348.

No. 93-307. Grist *v.* Runyon, Postmaster General. C. A. D. C. Cir. Certiorari denied.

No. 93-309. Porter Testing Laboratory *v.* Board of Regents for Oklahoma Agriculture and Mechanical Colleges et al. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 768.

No. 93-310. International Travel Arrangers *v.* NWA, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 1389.

No. 93-311. Long *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 621 So. 2d 383.

No. 93-315. Gillette *v.* Delmore et al. C. A. 9th Cir. Certiorari denied. Reported below: 979 F. 2d 1342.

No. 93-317. Rokke *v.* Rokke. Sup. Ct. Wash. Certiorari denied.

No. 93-321. Pritchett *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 80.

No. 93-327. Mylett *v.* Mullican et al. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 1347.

No. 93-328. Waggoner *v.* Waggoner. Sup. Ct. Ky. Certiorari denied. Reported below: 846 S. W. 2d 704.

No. 93-329. Kirk *v.* Mid America Title Co. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 417.

No. 93-331. Goldflam et al. *v.* Los Angeles Unified School District of Los Angeles County. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-361. Outdoor Media Group *v.* California Department of Transportation. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 13 Cal. App. 4th 1067, 17 Cal. Rptr. 2d 19.

No. 93-362. DESERT OUTDOOR ADVERTISING, INC. *v.* CALIFORNIA DEPARTMENT OF TRANSPORTATION. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93-367. BLAINEY ET AL. *v.* AMERICAN STEAMSHIP CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 990 F. 2d 885.

No. 93-386. KNUTSON *v.* WISCONSIN AIR NATIONAL GUARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 995 F. 2d 765.

No. 93-395. NADI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 548.

No. 93-430. MEDLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 463.

No. 93-436. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, ET AL. *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 619 A. 2d 77.

No. 93-437. HERRING ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 784.

No. 93-5158. PORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1014.

No. 93-5302. RICH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 502.

No. 93-5338. CASTILLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1251.

No. 93-5354. ZIEBARTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 986 F. 2d 503.

No. 93-5365. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1423.

No. 93-5370. HENTHORN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 93-5461. NOWLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 124.

No. 93–5528. Melendez *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 612 So. 2d 1366.

No. 93–5546. Herrera-Avila *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 93–5605. Carter *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 976 F. 2d 45.

No. 93–5642. Woodruff *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 846 P. 2d 1124.

No. 93–5669. Wheelock *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1248.

No. 93–5706. Largo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93–5716. Mickens *v.* Duckworth, Superintendent, Indiana State Reformatory. C. A. 7th Cir. Certiorari denied.

No. 93–5731. Jones, aka Butler *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 990 F. 2d 405.

No. 93–5767. Platt *v.* Petrosky. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 1474, 611 N. E. 2d 836.

No. 93–5781. Sanon *v.* Taylor University. C. A. 7th Cir. Certiorari denied.

No. 93–5791. Skeen *v.* Faison et al. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 791.

No. 93–5792. Wells *v.* Sandahl et al. C. A. 7th Cir. Certiorari denied.

No. 93–5793. Williams *v.* Jenn-Air Co. Ct. App. Ind. Certiorari denied. Reported below: 607 N. E. 2d 733.

No. 93–5794. Phillips *v.* Chiles, Governor of Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 93–5796. Coker *v.* California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–5798. DeBlois *v.* Love, Superintendent, State Correctional Institution at Huntingdon, et al. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93-5799. JACKSON *v.* YARBROUGH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 882.

No. 93-5800. KLEIN *v.* BOXX ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 883.

No. 93-5807. MCLAUGHLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-5811. PONTICELLI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 618 So. 2d 154.

No. 93-5815. COLQUITT *v.* FRATUS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 93-5817. BRAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-5822. RAFLA *v.* AZIZ. Sup. Ct. Tex. Certiorari denied.

No. 93-5823. PRUNTY *v.* VOINOVICH, GOVERNOR OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 93-5824. RUCKER *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 329 Md. 756, 621 A. 2d 897.

No. 93-5825. OWENS *v.* WILLIAMS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1555.

No. 93-5826. REED *v.* LABORERS' INTERNATIONAL UNION OF NORTH AMERICA ET AL. C. A. 7th Cir. Certiorari denied.

No. 93-5848. MASON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 617 So. 2d 320.

No. 93-5850. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 1493.

No. 93-5853. RACIMO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93-5855. GREENE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93-5881. WATKINS *v.* BOWERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 93-5905. HILL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93-5915. HARDIN *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1064.

No. 93-5920. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1005.

No. 93-5933. MAYER *v.* SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari before judgment denied.

No. 93-5937. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1064.

No. 93-5938. GOULETTE *v.* HUMPHREY, ATTORNEY GENERAL OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 93-5939. JOHNSON *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1537.

No. 93-5953. MCDONALD *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93-5960. DEBOLT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93-5962. FUENTEZ, AKA FUENTES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 1 F. 3d 662.

No. 93-5987. PAUL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied.

No. 93-6001. DE LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93-6007. DE LA CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 1307.

No. 93-6009. MENDOZA-BURCIAGA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 981 F. 2d 192.

No. 93-6010. WASHINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 785.

No. 93-6011. STAIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 972 F. 2d 1349.

No. 93-6018. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-6020. GRIMALDI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93-6028. LUCAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 405.

No. 93-6035. BISHOP *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93-6041. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 996 F. 2d 36.

No. 93-6050. WAKEFIELD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 93-6058. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 997 F. 2d 674.

No. 93-6061. BARRERA-BARRON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 244.

No. 93-6067. PALOMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 253.

No. 93-6069. CAVENDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93-6071. CHASE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 93-6073. WILSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 176 Wis. 2d 513, 502 N. W. 2d 619.

No. 93-6076. COX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93-6083. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93-6084. ORANTES-ARRIAGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 1491.

No. 93–6043. SPRIGGS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 996 F. 2d 320.

Rehearing Denied

No. 92–7301. CONNOR *v.* UNITED STATES, 507 U. S. 1034. Motion for leave to file petition for rehearing denied.

OCTOBER 25, 1993

Dismissal Under Rule 46

No. 92–1996. KEY PACIFIC MORTGAGE *v.* HELFRICH ET UX.; and ALASKA HOUSING FINANCE CORP. *v.* KURTH. C. A. 9th Cir. Certiorari dismissed as to *Key Pacific Mortgage* v. *Helfrich et ux.* under this Court's Rule 46. Reported below: 980 F. 2d 737.

OCTOBER 27, 1993

Dismissal Under Rule 46

No. 93–6232. BABY BOY J. *v.* JOHNSON ET AL. Sup. Ct. Cal. Certiorari dismissed under this Court's Rule 46.2. Reported below: 5 Cal. 4th 84, 851 P. 2d 776.

Miscellaneous Order

No. A–375 (93–6497). MCFARLAND *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

OCTOBER 29, 1993

Certiorari Granted—Vacated and Remanded

No. 93–5923. ZIMMERMAN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *Texas*, 509 U. S. 350 (1993). Reported below: 860 S. W. 2d 89.

Miscellaneous Order

No. A–373. UNITED STATES DEPARTMENT OF DEFENSE ET AL. *v.* MEINHOLD. Application of the Solicitor General for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted in part. It is ordered that so much of the order of the United States District Court for the Central District of California, No. CV 92–6044 TJH (JRx), filed September 30, 1993, as grants relief to persons other than Volker Keith Meinhold is stayed pending disposition of the appeal by the United States Court of Appeals for the Ninth Circuit. See *Heckler* v. *Lopez*, 463 U. S. 1328 (REHNQUIST, J., in chambers), motion to vacate stay denied, 464 U. S. 879 (1983); *id.*, at 881 (STEVENS, J., dissenting in part). Request for stay of the portion of the injunction prohibiting the Government from maintaining records pertaining to Meinhold denied. It is further ordered that the Government can file, under seal, any such documents pending the final outcome of this litigation.

NOVEMBER 1, 1993

Vacated and Remanded After Certiorari Granted

No. 92–1183. KNOX *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, 508 U. S. 959.] Motion of National Law Center for Children and Families et al. for leave to participate in oral argument as *amici curiae* and for divided argument dismissed as moot. Motion of National Family Legal Foundation for leave to participate in oral argument as *amicus curiae* dismissed as moot. Judgment vacated and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed September 17, 1993.

Certiorari Granted—Vacated and Remanded

No. 92–1465. CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER, ET AL. *v.* MCINTYRE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Dixon*, 509 U. S. 688 (1993). Reported below: 975 F. 2d 437.

No. 92–8957. WOODARD *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presented by the Solicitor General in his brief for the United States filed July 29, 1993. Reported below: 985 F. 2d 578.

Miscellaneous Orders

No. ———. KENNEDY *v.* UNITED STATES. Motion of petitioner for leave to file petition for writ of certiorari under seal denied. Motion of the Solicitor General for leave to file a response under seal dismissed as moot.

No. D–1291. IN RE DISBARMENT OF KILPATRICK. Rule to show cause discharged, and the order suspending respondent from the practice of law in this Court, dated August 26, 1993 [509 U. S. 944], is hereby vacated.

No. D–1293. IN RE DISBARMENT OF DAMIANI. Disbarment entered. [For earlier order herein, see 509 U. S. 944.]

No. D–1295. IN RE DISBARMENT OF KANALEY. John Collins Kanaley, of Syracuse, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on August 26, 1993 [509 U. S. 944], is hereby discharged.

No. D–1298. IN RE DISBARMENT OF ROONEY. Disbarment entered. [For earlier order herein, see 509 U. S. 945.]

No. D–1301. IN RE DISBARMENT OF POHLMANN. John Milton Pohlmann, of Lafayette, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on September 24, 1993 [509 U. S. 949], is hereby discharged.

No. D–1318. IN RE DISBARMENT OF ANNIN. It is ordered that Roselyn Costa Annin, of Manteca, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1319. IN RE DISBARMENT OF COHN. It is ordered that Steven Lawrence Cohn, of Beverly Hills, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1320. IN RE DISBARMENT OF DE LOACH. It is ordered that Guion T. De Loach, of Naples, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1321. IN RE DISBARMENT OF WERNER. It is ordered that William Jules Werner, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for award of compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $59,566.79 for the period October 16, 1992, through August 31, 1993, to be paid as follows: 30% to be paid by each Nebraska and Wyoming, 15% to be paid by Colorado, and 25% to be paid by the United States. [For earlier order herein, see, *e. g.*, 507 U. S. 1049.]

No. 121, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Motion for leave to file bill of complaint granted, and defendants are allowed 30 days within which to file answers. [For earlier order herein, see *ante*, p. 803.]

No. 92–1274. ANAGO INC. *v.* TECNOL MEDICAL PRODUCTS, INC. C. A. 5th Cir. Motion of the parties to defer consideration of petition for writ of certiorari granted until December 1, 1993.

No. 92–1988. TICOR TITLE INSURANCE CO. ET AL. *v.* BROWN ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 810.] Motion of respondents to defer briefing and oral argument denied.

No. 92–7247. FARMER *v.* BRENNAN, WARDEN, ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 811.] Motion for appointment of counsel granted, and it is ordered that Alvin J. Bronstein, Esq., of Washington, D. C., be appointed to serve as counsel for petitioner in this case.

No. 92–8556. NICHOLS *v.* UNITED STATES. C. A. 6th Cir. [Certiorari granted, 509 U. S. 953.] Motion for appointment of counsel granted, and it is ordered that William B. Mitchell Carter, Esq., of Chattanooga, Tenn., be appointed to serve as counsel for petitioner in this case.

No. 92–9049. SANDOVAL *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, 509 U. S. 954.] Motion for appointment of counsel granted, and it is ordered that Eric S. Multhaup, Esq., of San Francisco, Cal., be appointed to serve as counsel for petitioner in this case.

No. 92–9059. SIMMONS *v.* SOUTH CAROLINA. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 811.] Motion for appointment of counsel granted, and it is ordered that David I. Bruck, Esq., of Columbia, S. C., be appointed to serve as counsel for petitioner in this case.

No. 93–5877. SASSOWER *v.* THOMPSON, HINE & FLORY ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 22, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 93–6184. IN RE BOTELLO. Petition for writ of habeas corpus denied.

No. 93–5503. IN RE MYERS;
No. 93–5555. IN RE HOOKS;
No. 93–5828. IN RE WYRE;
No. 93–5973. IN RE NAGY; and
No. 93–5980. IN RE HENTHORN. Petitions for writs of mandamus denied.

Certiorari Granted

No. 92–1949. DAVIS *v.* UNITED STATES. Ct. Mil. App. Certiorari granted. Reported below: 36 M. J. 337.

No. 93–405. DIGITAL EQUIPMENT CORP. *v.* DESKTOP DIRECT, INC. C. A. 10th Cir. Certiorari granted. Reported below: 993 F. 2d 755.

No. 92–1384. BARCLAYS BANK PLC *v.* FRANCHISE TAX BOARD OF CALIFORNIA; and

No. 92–1839. COLGATE-PALMOLIVE CO. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Ct. App. Cal., 3d App. Dist. Motions of Government of the United Kingdom and Committee on State Taxation et al. for leave to file supplemental briefs as *amici curiae* in No. 92–1384 denied. Certiorari granted, cases consolidated, and a total of one and one-half hours allotted for oral argument. Reported below: No. 92–1384, 10 Cal. App. 4th 1742, 14 Cal. Rptr. 2d 537; No. 92–1839, 10 Cal. App. 4th 1768, 13 Cal. Rptr. 2d 761.

No. 93–377. DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK ET AL. *v.* MILHELM ATTEA & BROS., INC., ET AL. Ct. App. N. Y. Motions of Empire State Petroleum Association, Inc., New York State Association of Tobacco and Candy Distributors, and Seneca Nation of Indians et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 81 N. Y. 2d 417, 615 N. E. 2d 994.

No. 92–8346. SHANNON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 981 F. 2d 759.

No. 92–9093. ROMANO *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Does admission of evidence that a capital defendant already has been sentenced to death in another case impermissibly undermine the sentencing jury's sense of responsibility for determining the appropriateness of the defendant's death, in violation of the Eighth and Fourteenth Amendments?" Reported below: 847 P. 2d 368.

No. 93–5770. STANSBURY *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 3 presented by the petition. Reported below: 4 Cal. 4th 1017, 846 P. 2d 756.

Certiorari Denied

No. 92–1960. RESHA ET AL. *v.* TUCKER. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 600 So. 2d 16.

No. 92–1961. TIMES PUBLISHING CO. ET AL. *v.* RUSSELL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 592 So. 2d 808.

No. 92–2032. WIDDOSS, NBM HINELINE, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF MILLER, DECEASED *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 989 F. 2d 1170.

No. 92–8401. HOWARD ET UX. *v.* GREENBERG. Super. Ct. N. J., App. Div. Certiorari denied.

No. 92–8566. TODD *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 154 Ill. 2d 57, 607 N. E. 2d 1189.

No. 92–9153. BENN *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 120 Wash. 2d 631, 845 P. 2d 289.

No. 93–58. HARMS ET AL. *v.* CAVENHAM FOREST INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 984 F. 2d 686.

No. 93–111. HUSSMANN CORP. *v.* COOK. Sup. Ct. Mo. Certiorari denied. Reported below: 852 S. W. 2d 342.

No. 93–115. NYSA–ILA WELFARE FUND ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL.;

No. 93–193. NEW JERSEY CARPENTERS WELFARE FUND ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL.;

No. 93–194. UNITED WIRE, METAL & MACHINE HEALTH AND WELFARE FUND ET AL. *v.* MORRISTOWN MEMORIAL HOSPITAL ET AL.; and

No. 93–210. TRUSTEES OF THE WELFARE TRUST FUND, LOCAL UNION NO. 475, ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 1179.

No. 93–159. ROWENHORST *v.* MITCHELL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1259.

No. 93–179. GRACE COMMUNITY CHURCH *v.* TOWN OF BETHEL ET AL. App. Ct. Conn. Certiorari denied. Reported below: 30 Conn. App. 765, 622 A. 2d 591.

No. 93–202. KURAHARA & MORRISSEY *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 572.

No. 93–209. Blankstyn *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 117.

No. 93–232. Luparelli, Administrator of Estate of Luparelli, Deceased *v.* Sohn et al. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 648, 616 A. 2d 726.

No. 93–257. Ronwin *v.* Smith Barney, Harris Upham & Co., Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1221.

No. 93–260. Chicago Bridge & Iron Co. *v.* California Board of Equalization. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–292. Fogel et al. *v.* Kopelson et al.; and

No. 93–293. JEM Management Associates Corp. et al. *v.* Sperber Adams Associates et al. C. A. 2d Cir. Certiorari denied. Reported below: 989 F. 2d 93.

No. 93–294. Singleton *v.* Stiles et al. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 323.

No. 93–333. Roby et al. *v.* Corporation of Lloyd's et al. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 1353.

No. 93–334. Garcia *v.* Southern Pacific Transportation Co. et al. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 93–338. Lake Forest Developments *v.* First Gibraltar Bank, FSB. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 197.

No. 93–341. Laws *v.* Terry, Attorney General of Virginia. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1537.

No. 93–343. Stochastic Decisions, Inc. *v.* DiDomenico et al. C. A. 2d Cir. Certiorari denied. Reported below: 995 F. 2d 1158.

No. 93–346. Wallin *v.* Indeterminate Sentence Review Board et al. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1266.

No. 93–350. Allstate Life Insurance Co. *v.* Linter Group Ltd. et al. C. A. 2d Cir. Certiorari denied. Reported below: 994 F. 2d 996.

No. 93–351. White *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 93–353. Hale et al. *v.* Arizona et al. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 1387.

No. 93–355. Cosgriff *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 93–357. Krueger et al. *v.* Fuhr. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 435.

No. 93–358. Jones et al. *v.* Caterpillar Inc. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 241 Ill. App. 3d 129, 607 N. E. 2d 1348.

No. 93–359. Smith *v.* City of Del Mar. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–360. Nobles *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 333 N. C. 787, 429 S. E. 2d 716.

No. 93–363. Beavers *v.* Nevada Department of Motor Vehicles and Public Safety. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 435, 851 P. 2d 432.

No. 93–364. Frazier *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 93–365. Bowen *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 241 Ill. App. 3d 608, 609 N. E. 2d 346.

No. 93–371. Barnes *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 333 N. C. 666, 430 S. E. 2d 223.

No. 93–378. North Carolina Association of Electronic Tax Filers, Inc., et al. *v.* Graham, Commissioner of Banks, North Carolina Banking Commission. Sup. Ct. N. C. Certiorari denied. Reported below: 333 N. C. 555, 429 S. E. 2d 544.

No. 93–379. Vandervelden *v.* Victoria. Ct. App. Wis. Certiorari denied. Reported below: 177 Wis. 2d 243, 502 N. W. 2d 276.

No. 93-381. DUNSMORE, VERMONT COMMISSIONER OF AGRICULTURE, ET AL. *v.* HELEBA ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 160 Vt. 283, 628 A. 2d 1237.

No. 93-384. ENTEZARI *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 68 Wash. App. 1044.

No. 93-385. GENERAL MILLS, INC., ET AL. *v.* POWER AUTHORITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 726.

No. 93-391. CAPITAL IMAGING ASSOCIATES, P. C. *v.* MOHAWK VALLEY MEDICAL ASSOCIATES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 537.

No. 93-392. GARDNER *v.* REED, INDIVIDUALLY, AS ADMINISTRATOR OF ESTATE OF REED AND AS GUARDIAN OF ESTATE OF REED, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 986 F. 2d 1122.

No. 93-393. ALLIED PRODUCTS CORP. *v.* VAGENAS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 104.

No. 93-394. SMITH ET AL. *v.* LOWER MERION TOWNSHIP. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 219.

No. 93-402. EVANS ET AL. *v.* HEICHELBECH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93-403. AMAX METALS RECOVERY, INC. *v.* UNITED STEELWORKERS OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93-408. MEEK *v.* GEM BOAT SERVICE, INC. Ct. App. Ohio, Ottawa County. Certiorari denied. Reported below: 86 Ohio App. 3d 322, 620 N. E. 2d 983.

No. 93-413. LOCKRIDGE *v.* KAMBOURIS ET AL. Ct. App. Mich. Certiorari denied.

No. 93-414. BRAHM *v.* BRAHM. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 620 So. 2d 766.

No. 93-415. HUTCHINSON *v.* COMPOSITE STATE BOARD OF MEDICAL EXAMINERS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 186, 429 S. E. 2d 661.

No. 93–431. LOCKARD *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93–446. HPY INC. *v.* ELECTRIC POWER AUTHORITY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 991 F. 2d 786.

No. 93–458. SHIEH ET AL. *v.* CHRISTOPHER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–463. GRECCO, AKA WOLSHONAK, ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 449.

No. 93–468. GUNTER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 313 Ark. 504, 857 S. W. 2d 156.

No. 93–469. JONES ET AL. *v.* COMMERCIAL STATE BANK OF EL CAMPO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 233.

No. 93–495. ROBBINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 997 F. 2d 390.

No. 93–497. MCGINNIS *v.* MARYLAND. Cir. Ct. Dorchester County, Md. Certiorari denied.

No. 93–504. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–508. HAUSER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 93–514. NIEMELA ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 995 F. 2d 1061.

No. 93–5025. DAVIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 598 N. E. 2d 1041.

No. 93–5062. BUSCHBOM *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–5077. SYRIANI *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 333 N. C. 350, 428 S. E. 2d 118.

No. 93-5160. RILEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 120.

No. 93-5163. ROSALES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 841 S. W. 2d 368.

No. 93-5225. EARLS ET AL. *v.* GARDNER, FORMER GOVERNOR OF WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 122.

No. 93-5238. STRICKLER *v.* WATERS. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 1375.

No. 93-5276. WEST *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93-5345. BLACKBURN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 992 F. 2d 666.

No. 93-5431. MCFARLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 1188.

No. 93-5451. RUTH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93-5459. HAHN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93-5460. GEURIN *v.* UNITED STATES ET AL.; and GEURIN *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 9th Cir. Certiorari denied.

No. 93-5486. MCANINCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 1380.

No. 93-5498. HOUSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93-5522. EATON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 986 F. 2d 1423.

No. 93-5535. DENSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93-5540. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 195.

No. 93-5607. ABREU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1217.

No. 93-5644. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93-5659. RIVERA RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93-5666. ALEXANDER ET AL. *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1238.

No. 93-5700. DAVIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 5, 426 S. E. 2d 844.

No. 93-5730. JOHNSON *v.* UNITED STATES;
No. 93-5746. SAGET *v.* UNITED STATES; and
No. 93-5804. ROBERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 991 F. 2d 702.

No. 93-5752. AQUINO-ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93-5753. HILL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 37, 427 S. E. 2d 770.

No. 93-5755. WARREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 1300.

No. 93-5783. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 219.

No. 93-5810. STRAUCH *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93-5819. NICK *v.* DEPARTMENT OF MOTOR VEHICLES ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 12 Cal. App. 4th 1407, 16 Cal. Rptr. 2d 305.

No. 93-5834. CHAPPELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93-5841. BROWN *v.* UNKNOWN PSYCHIATRIST, UNITED STATES ATTORNEY WITNESS. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1210.

No. 93-5846. Richards *v.* Medical Center of Delaware Inc. et al. C. A. 3d Cir. Certiorari denied.

No. 93-5856. Hill *v.* Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 93-5858. Foster *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 614 So. 2d 455.

No. 93-5861. Herrera *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 21, 859 P. 2d 131.

No. 93-5862. Enoch *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 240 Ill. App. 3d 1108, 656 N. E. 2d 806.

No. 93-5866. O'Diah *v.* Applied Risk Management et al.; and O'Diah *v.* California Workers' Compensation Appeals Board et al. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93-5868. Eartha D. *v.* Orange County Social Services Agency. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93-5873. Lewis *v.* Williams, Warden. C. A. 11th Cir. Certiorari denied.

No. 93-5878. Beavers *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 856 S. W. 2d 429.

No. 93-5879. Taylor *v.* Duckworth, Superintendent, Indiana State Reformatory. C. A. 7th Cir. Certiorari denied.

No. 93-5880. Young *v.* Lackawanna County Court of Common Pleas et al. C. A. 3d Cir. Certiorari denied.

No. 93-5883. Williams *v.* Whitley, Warden, et al. C. A. 5th Cir. Certiorari denied.

No. 93-5884. White *v.* Temple University. C. A. 3d Cir. Certiorari denied.

No. 93-5885. Sharpe *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 125.

No. 93-5896. Hatchett *v.* Jones, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 233.

No. 93–5897. GRESH *v.* GRESH. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 644, 616 A. 2d 723.

No. 93–5900. ZARLING ET AL. *v.* UNIVERSAL LIFE CHURCH. C. A. 7th Cir. Certiorari denied. Reported below: 989 F. 2d 503.

No. 93–5901. THOMPSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 994 F. 2d 864.

No. 93–5903. HAMMER *v.* SAFFLE, REGIONAL DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 986 F. 2d 1427.

No. 93–5908. MCELWEE *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 883.

No. 93–5909. LOVE *v.* HARSH INVESTMENT CORP. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 1076.

No. 93–5910. SCHULTZ *v.* ELMER ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93–5911. PARTEE *v.* GODINEZ, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 93–5913. FELTS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93–5918. FOSS *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 310.

No. 93–5921. GIBBS *v.* OKLAHOMA DEPARTMENT OF TRANSPORTATION. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 547.

No. 93–5922. GLEDA K. *v.* DANE COUNTY, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 175 Wis. 2d 622, 502 N. W. 2d 282.

No. 93–5924. CARTER *v.* MARTINEZ ET AL. C. A. 10th Cir. Certiorari denied.

No. 93–5925. BRAZELL *v.* BOYD, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 787.

No. 93–5928. CRAIG *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1221.

No. 93-5930. WIGHTMAN *v.* ST. JOHN'S HOSPITAL & HEALTH CENTER, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93-5934. ROCHE *v.* SABO. Sup. Ct. Mont. Certiorari denied. Reported below: 259 Mont. 76, 853 P. 2d 1258.

No. 93-5935. NICOLAU *v.* CITY OF YONKERS POLICE DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 93-5941. HUNT *v.* BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1489.

No. 93-5942. CAMARENA *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 93-5943. MILLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 987 F. 2d 1311.

No. 93-5945. ORTEGA *v.* SECOND DISTRICT COURT OF APPEAL. Sup. Ct. Cal. Certiorari denied.

No. 93-5947. PEARSON *v.* GARVIN, SUPERINTENDENT, MID-ORANGE CORRECTIONAL FACILITY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 93-5948. MILLARD *v.* CRUZOT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93-5949. MCDONALD *v.* ESPARZA ET AL. Sup. Ct. Tex. Certiorari denied.

No. 93-5950. MCDONALD *v.* WOODS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93-5951. DEMPSEY *v.* COMMISSIONER, MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH, ET AL. C. A. 1st Cir. Certiorari denied.

No. 93-5954. TRIESTMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 93-5957. DAVIS *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–5958. Sloan *v.* Roberts et al. Cir. Ct., City of Lynchburg, Va. Certiorari denied.

No. 93–5959. Conn *v.* Kapture, Warden. C. A. 6th Cir. Certiorari denied.

No. 93–5967. Humphrey *v.* Coleman et al. Sup. Ct. Tex. Certiorari denied.

No. 93–5968. Restrepo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 640.

No. 93–5969. McGhee *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93–5970. Reaves *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 545.

No. 93–5976. Campbell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93–5977. Cumber *v.* Morton et al. C. A. 3d Cir. Certiorari denied.

No. 93–5978. Campbell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 544.

No. 93–5985. Antonelli *v.* Neville et al. Sup. Ct. Ill. Certiorari denied.

No. 93–5986. Miller *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 806.

No. 93–5989. Martin *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 1 F. 3d 1253.

No. 93–5995. Seavoy *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 995 F. 2d 1414.

No. 93–6006. Aultman *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 621 So. 2d 353.

No. 93–6012. Veasey *v.* Ryan, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 93–6014. Sanchez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 995 F. 2d 307.

No. 93-6027. ROJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 985 F. 2d 576.

No. 93-6029. PIERSON *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 318.

No. 93-6032. GASTER *v.* TAYLOR, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1008.

No. 93-6038. COWTHRAN *v.* BROOKSHIRE GROCERY CO. C. A. 5th Cir. Certiorari denied.

No. 93-6044. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 200.

No. 93-6051. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93-6054. GUAJARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93-6056. HOMICK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 740.

No. 93-6063. DEMARCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 456.

No. 93-6068. ACEVEDO-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93-6070. AIKEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 93-6072. CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93-6075. DE LA PAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 232.

No. 93-6077. GRAY *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 308.

No. 93-6078. ADDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93-6080. SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93–6087. RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1229.

No. 93–6096. HOPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 314.

No. 93–6100. LIEU THI TRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 235.

No. 93–6103. MANNING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1229.

No. 93–6107. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 314.

No. 93–6109. SAA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 221.

No. 93–6110. CURRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93–6111. CAPELLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93–6116. BOHN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1005.

No. 93–6117. SLOAN *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1234.

No. 93–6118. HELTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–6119. ROLFE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 997 F. 2d 189.

No. 93–6124. COLLINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 950.

No. 93–6125. YEAGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93–6126. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 596.

No. 93–6127. BUTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 537.

No. 93–6129. Diaz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 880.

No. 93–6132. Barton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 931.

No. 93–6133. Johnson *v.* United States District Court for the Eastern District of Pennsylvania. C. A. 3d Cir. Certiorari denied.

No. 93–6139. Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93–6140. Marshall *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1213.

No. 93–6144. Barnes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93–6148. Eatmon *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 314.

No. 93–6150. Head *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–6153. Jordan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 543.

No. 93–6156. Stewart *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–6158. Beard *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 934.

No. 93–6159. Birth *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–6161. Nix *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 308.

No. 93–6163. Mount *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 1209.

No. 93–6167. Lindemann et al. *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 611 So. 2d 1260.

No. 93-6169. HASHMI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93-6171. JAMES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 998 F. 2d 74.

No. 93-6179. LOHR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 93-6187. WHITE *v.* DETROIT DIESEL ALLISON ENGINE PLANT/TRUCK & BUS GM CORPORATION DIVISION. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 93-6189. KOSTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93-6196. NICHOLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 93-6197. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 302.

No. 93-6208. GRADY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 997 F. 2d 421.

No. 93-6209. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 93-6210. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 1129.

No. 93-6214. SANDERS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93-6216. SPAGNOLI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 980 F. 2d 726.

No. 93-6219. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93-6229. SCHILLING *v.* GRE INSURANCE CO. ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 93-6230. BARROWS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 12.

No. 93–6236. HODGES *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 93–6239. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 994 F. 2d 980.

No. 93–6240. FONSECA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–6287. MUNEZ *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 82 N. Y. 2d 723, 622 N. E. 2d 321.

No. 93–190. NORTH AMERICAN FUND MANAGEMENT CORP., DBA NORAMTRUST U. S. A., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 991 F. 2d 873.

No. 93–326. SECURITY PACIFIC AUTOMOTIVE FINANCIAL SERVICES CORP. *v.* LUNDQUIST. C. A. 2d Cir. Motion of National Vehicle Leasing Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 993 F. 2d 11.

No. 93–374. VON ZUCKERSTEIN ET AL. *v.* ARGONNE NATIONAL LABORATORY. C. A. 7th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 984 F. 2d 1467.

No. 93–453. ROMER, GOVERNOR OF COLORADO, ET AL. *v.* EVANS ET AL. Sup. Ct. Colo. Motion of Colorado for Family Values for leave to file a brief as *amicus curiae* denied. Certiorari denied. Reported below: 854 P. 2d 1270.

No. 93–475. WATTLES, DECEASED *v.* CITY OF TROY. Ct. App. Mich. Motion of Brian J. Wattles for substitution in his capacity as personal representative of the estate of Jervis Wattles, deceased, granted. Certiorari denied.

Rehearing Denied

No. 92–8932. PIZZO *v.* WHITLEY, WARDEN, ET AL., *ante*, p. 841;
No. 92–8985. SEAY *v.* EATON, *ante*, p. 844;
No. 93–175. MOTHERSHED *v.* GREGG ET AL., *ante*, p. 868; and

No. 93–5391. STEWARD *v.* GWALTNEY OF SMITHFIELD, LTD., *ante*, p. 891. Petitions for rehearing denied.

NOVEMBER 3, 1993

Dismissal Under Rule 46

No. 93–551. CERNA *v.* UNITED STATES. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 996 F. 2d 1217.

NOVEMBER 4, 1993

Dismissal Under Rule 46

No. 93–231. LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA *v.* LEVINGSTON ET AL. Ct. App. Cal., 1st App. Dist. Certiorari dismissed under this Court's Rule 46. Reported below: 12 Cal. App. 4th 1303, 16 Cal. Rptr. 2d 100.

NOVEMBER 5, 1993

Dismissal Under Rule 46

No. 92–787. KUHN *v.* ISLAND CREEK COAL CO. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 974 F. 2d 1338.

NOVEMBER 8, 1993

Miscellaneous Orders

No. ———. MERRELL *v.* SIMPSON ET AL.;
No. ———. JONES *v.* DALTON, SECRETARY OF THE NAVY;
No. ———. TRINSEY *v.* MITCHELL, SECRETARY OF COMMONWEALTH OF PENNSYLVANIA; and
No. ———. FIGURES *v.* FIGURES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. A–357. SHAPOURI *v.* IMMIGRATION AND NATURALIZATION SERVICE. Application for stay, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–1279. IN RE DISBARMENT OF PIPKINS. Disbarment entered. [For earlier order herein, see 509 U. S. 936.]

No. D–1292. In re Disbarment of Robinson. Disbarment entered. [For earlier order herein, see 509 U. S. 944.]

No. D–1296. In re Disbarment of Hohenstein. Disbarment entered. [For earlier order herein, see 509 U. S. 945.]

No. D–1297. In re Disbarment of Smith. Disbarment entered. [For earlier order herein, see 509 U. S. 945.]

No. D–1322. In re Disbarment of Iverson. It is ordered that Yale H. Iverson, of West Des Moines, Iowa, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1323. In re Disbarment of Steffen. It is ordered that Albert Joseph Steffen, of Cincinnati, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1324. In re Disbarment of Rios. It is ordered that Raphael Rios, of Chicago, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 92–1392. Shalala, Secretary of Health and Human Services *v.* Schoolcraft et al.; and

No. 92–1395. Roers, Director of Minnesota Disability Determination Services, et al. *v.* Schoolcraft et al. C. A. 8th Cir. Motion of the parties to further defer consideration of petitions for writs of certiorari granted.

No. 92–1402. C & A Carbone, Inc., et al. *v.* Town of Clarkstown, New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. [Certiorari granted, 508 U. S. 938.] Motion of respondent for leave to file a limited surreply brief denied.

No. 92–1450. Waters et al. *v.* Churchill et al. C. A. 7th Cir. [Certiorari granted, 509 U. S. 903.] Motion of American Nurses Association for leave to file a brief as *amicus curiae* granted.

No. 92–1639. City of Chicago et al. *v.* Environmental Defense Fund et al. C. A. 7th Cir. [Certiorari granted, 509

U. S. 903.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted to be divided as follows: 25 minutes for petitioners, 25 minutes for respondents, and 10 minutes for the Solicitor General.

No. 92–1662. UNITED STATES *v.* GRANDERSON. C. A. 11th Cir. [Certiorari granted, 509 U. S. 921.] Motion of respondent to dismiss the writ of certiorari as improvidently granted denied.

No. 92–1941. UNITED STATES *v.* CARLTON. C. A. 9th Cir. [Certiorari granted, *ante*, p. 810.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 92–9014. IN RE BAUER. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 93–70. OREGON WASTE SYSTEMS, INC., ET AL. *v.* DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON ET AL.; and

No. 93–108. COLUMBIA RESOURCE CO. *v.* ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON. Sup. Ct. Ore. [Certiorari granted, 509 U. S. 953.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 93–144. DEPARTMENT OF REVENUE OF MONTANA *v.* KURTH RANCH ET AL. C. A. 9th Cir. [Certiorari granted, 509 U. S. 953.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 93–5622. JONES *v.* JACKSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 808] denied. JUSTICE GINSBURG took no part in the consideration or decision of this motion.

No. 93–6042. KRUSE *v.* IOWA DEPARTMENT OF HUMAN SERVICES. Ct. App. Iowa; and

No. 93–6255. STEINES ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 29, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–6130. In re Jones. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 29, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 93–6352. In re Punchard; and
No. 93–6372. In re Skurdal. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 93–5418. Reed *v.* Farley, Superintendent, Indiana State Prison, et al. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 984 F. 2d 209.

Certiorari Denied

No. 92–1862. B. C. *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 610 So. 2d 204.

No. 92–8798. Hill *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 4th 959, 839 P. 2d 984.

No. 92–8872. Cox *v.* Bunnell, Superintendent, California Correctional Institution, Tehachapi. C. A. 9th Cir. Certiorari denied. Reported below: 981 F. 2d 1257.

No. 92–9158. Houston *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1218.

No. 93–38. Farmer *v.* Haas et al. C. A. 7th Cir. Certiorari denied. Reported below: 990 F. 2d 319.

No. 93–90. Blake Construction Co., Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 987 F. 2d 743.

No. 93–97. Rind *v.* Securities and Exchange Commission. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 1486.

No. 93–171. Kamehameha Schools/Bishop Estate *v.* Equal Employment Opportunity Commission. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 458.

No. 93–253. GRUNWALD ET AL. *v.* SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 1370.

No. 93–256. PASSAIC VALLEY SEWERAGE COMMISSIONERS *v.* UNITED STATES DEPARTMENT OF LABOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 992 F. 2d 474.

No. 93–259. MONROE COUNTY, FLORIDA *v.* NEW PORT LARGO, INC. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 1488.

No. 93–271. MADISON LIBRARY, INC., ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 989 F. 2d 1290.

No. 93–409. BRAINERD AREA CIVIC CENTER ET AL. *v.* MINNESOTA COMMISSIONER OF REVENUE. Sup. Ct. Minn. Certiorari denied. Reported below: 499 N. W. 2d 468.

No. 93–410. UPP *v.* MELLON BANK, N. A. C. A. 3d Cir. Certiorari denied. Reported below: 994 F. 2d 1039.

No. 93–411. SCHLOEGEL ET AL. *v.* BOSWELL. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 266.

No. 93–417. REALTY PHOTO MASTER CORP. *v.* MONTGOMERY COUNTY ASSOCIATION OF REALTORS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1538.

No. 93–419. BOULET ET AL. *v.* THIBODEAUX ET AL. Sup. Ct. La. Certiorari denied. Reported below: 619 So. 2d 563.

No. 93–425. MUTUAL OF OMAHA LIFE INSURANCE CO. *v.* DAHL-EIMERS. C. A. 11th Cir. Certiorari denied.

No. 93–426. PACIFIC LIGHTING CORP. ET AL. *v.* MGW, INC. Sup. Ct. Cal. Certiorari denied.

No. 93–427. CLOWES *v.* ALLEGHENY VALLEY HOSPITAL. C. A. 3d Cir. Certiorari denied. Reported below: 991 F. 2d 1159.

No. 93–435. ST. PAUL FIRE & MARINE INSURANCE CO. *v.* CAMP ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 428.

No. 93–441. Gulf Coast Industrial Workers Union *v.* Exxon Co., USA. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 244.

No. 93–443. McIntosh, Individually and as Conservator for McIntosh, a Protected Person *v.* Pacific Holding Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 882.

No. 93–448. Abramson Enterprises, Inc. *v.* Thomas, Director, Virgin Islands Bureau of Internal Revenue. C. A. 3d Cir. Certiorari denied. Reported below: 994 F. 2d 140.

No. 93–462. Betke *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 243 Neb. xviii.

No. 93–465. Scarfone *v.* Michigan State Board of Law Examiners. Sup. Ct. Mich. Certiorari denied.

No. 93–493. Tapert *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–505. Alto-Shaam, Inc. *v.* National Labor Relations Board. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1219.

No. 93–511. Chisnell, Executrix of the Estate of Robitzer *v.* Pennsylvania State Police Bureau of Liquor Control Enforcement et al. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93–512. Williams et al. *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 999 F. 2d 760.

No. 93–513. Foden et vir *v.* Gianoli Aldunate et al. C. A. 2d Cir. Certiorari denied. Reported below: 3 F. 3d 54.

No. 93–546. Musslyn *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 801.

No. 93–552. Ratliff *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–553. Trandes Corp. *v.* Guy F. Atkinson Co. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 655.

No. 93–5250. Harris *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 760.

No. 93–5462. Gray *v.* Whitley, Warden, et al. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–5474. Mount *v.* United States District Court for the District of Massachusetts. C. A. 1st Cir. Certiorari denied.

No. 93–5487. Windham *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 181.

No. 93–5505. Wildberger *v.* Rosenbaum et al. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–5530. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 232.

No. 93–5581. Jones *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 155 Ill. 2d 357, 614 N. E. 2d 1219.

No. 93–5585. Roberson *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 93–5586. Moreno *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 858 S. W. 2d 453.

No. 93–5600. Vinagera-Cesar *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 887.

No. 93–5621. Thompson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 619 So. 2d 261.

No. 93–5631. Nichols *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1218.

No. 93–5646. Cullum *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 979 F. 2d 210.

No. 93–5818. Ramirez Delosantos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93–5820. Herrera *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 9, 859 P. 2d 119.

No. 93-5874. Sparks *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied.

No. 93-5952. Jackson *v.* Moro et al. C. A. 5th Cir. Certiorari denied.

No. 93-5965. Taylor *v.* Michigan Department of Corrections et al. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93-5966. Irvin *v.* Armontrout, Assistant Director/Zone II, Missouri Division of Adult Institutions. C. A. 8th Cir. Certiorari denied.

No. 93-5972. Lovett *v.* Ellingsworth, Warden, et al. C. A. 3d Cir. Certiorari denied.

No. 93-5974. Rudder *v.* Los Angeles County Superior Court. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-5975. Rupe *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1227.

No. 93-5979. Thomas *v.* Dutrow et al. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 548.

No. 93-5981. Camarena *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 93-5982. Camarena *v.* California Department of Corrections. C. A. 9th Cir. Certiorari denied.

No. 93-5984. Caton *v.* Maze et al. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 881.

No. 93-5988. Lightbourne *v.* Chiles, Governor of Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 93-5993. El-Tayeb *v.* Rabinowitz et al. C. A. 3d Cir. Certiorari denied.

No. 93-5994. Jones *v.* White, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 1548.

No. 93-5996. Sanders *v.* Hargett, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied.

No. 93-5997. Eline *v.* MTV, Inc., et al. C. A. 9th Cir. Certiorari denied.

No. 93-5998. Brooks *v.* Wombacher et al. C. A. 7th Cir. Certiorari denied.

No. 93-5999. Brooks *v.* Greer, Warden. C. A. 7th Cir. Certiorari denied.

No. 93-6000. Brooks *v.* Childs, Warden, et al. C. A. 7th Cir. Certiorari denied.

No. 93-6002. Pipkins *v.* State Bar of Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1411, 875 P. 2d 1073.

No. 93-6003. Rubiani *v.* Thomas, Warden. C. A. 11th Cir. Certiorari denied.

No. 93-6004. Garcia *v.* United States;
No. 93-6104. Paulino *v.* United States;
No. 93-6120. Lopez *v.* United States; and
No. 93-6165. Leonardo *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 996 F. 2d 1541.

No. 93-6005. Schuster *v.* South Dakota. Sup. Ct. S. D. Certiorari denied. Reported below: 502 N. W. 2d 565.

No. 93-6013. Thomas *v.* Newsome, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 93-6015. Elmore *v.* Bunnell, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 231.

No. 93-6016. Brasfield *v.* Brasfield. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 1222.

No. 93-6017. James *v.* Shiplevy, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93-6019. Jackson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-6022. Blake *v.* Coughlin, Commissioner, New York State Department of Correctional Services. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 983.

No. 93–6023. CARR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93–6024. BAXTER *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–6026. BEASLEY *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 838 S. W. 2d 695.

No. 93–6030. PRATT *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 316 Ore. 561, 853 P. 2d 827.

No. 93–6031. GRAHAM *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–6034. REYNA *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 304.

No. 93–6036. FREEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 241 Ill. App. 3d 682, 609 N. E. 2d 713.

No. 93–6037. CLAY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 93–6039. INGRAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 985 F. 2d 562.

No. 93–6048. SEYMOUR *v.* MONEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93–6052. ELLIS *v.* BORG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 93–6053. ERVIN *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93–6055. DUNCAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 619 So. 2d 279.

No. 93–6057. WAHI *v.* HERMAN. Sup. Ct. Cal. Certiorari denied.

No. 93–6059. WHITE *v.* TEMPLE UNIVERSITY. C. A. 3d Cir. Certiorari denied.

No. 93–6079. WASHINGTON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 305.

No. 93–6089. NORTH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–6090. HYDER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–6091. MOATS *v.* REID ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–6092. MORRISON *v.* ASSOCIATES IN INTERNAL MEDICINE ET AL. Super. Ct. Pa. Certiorari denied.

No. 93–6101. WILSON *v.* CURRAN, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 991 F. 2d 793.

No. 93–6108. WORONCOW *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 191 App. Div. 2d 530, 595 N. Y. S. 2d 62.

No. 93–6141. PETROS *v.* SANITATION DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1538.

No. 93–6142. DECKER *v.* HALPIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 303.

No. 93–6157. SATTERWHITE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 858 S. W. 2d 412.

No. 93–6160. ASHELMAN *v.* LEWIS ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–6174. DURHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 986.

No. 93–6176. BRONSON *v.* ZIMMERMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 216.

No. 93–6177. HARWOOD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 998 F. 2d 91.

No. 93–6180. MCQUEEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–6190. EBOW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93–6215. ROBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 977 F. 2d 593.

No. 93–6231. STOVALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 546.

No. 93–6244. OJEDA-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93–6245. RUSSELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 312.

No. 93–6246. ROQUE-ROMERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1580.

No. 93–6258. MORENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 991 F. 2d 943.

No. 93–6259. ROSILES-ORTIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 1017.

No. 93–6263. MURPHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 94.

No. 93–6274. HERNANDEZ-GARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 545.

No. 93–6275. FANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93–6276. MCCRAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93–6277. PENASS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 997 F. 2d 1227.

No. 93–6278. RENO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 992 F. 2d 739.

No. 93–6282. STATON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–6283. SENIOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1539.

No. 93–6284. THOMPSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 456.

No. 93–6285. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93–6290. MOUNT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 995 F. 2d 1061.

No. 93–6346. BARTLETT *v.* DOMOVICH, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–277. THERIOT ET AL. *v.* GREAT WESTERN COCA-COLA BOTTLING, DBA COCA-COLA BOTTLING COMPANY OF HOUSTON. C. A. 5th Cir. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 985 F. 2d 557.

No. 93–433. ESTATE OF PITRE *v.* WESTERN ELECTRIC CO., INC. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 975 F. 2d 700.

No. 93–434. SUSAN R. M., BY HER NEXT FRIEND, CHARLES L. M. *v.* NORTHEAST INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Motion of petitioner to strike respondent Texas Education's statement denied. Certiorari denied. Reported below: 995 F. 2d 222.

Rehearing Denied

No. 92–8265. MOORE *v.* HAM, CORRECTIONS CAPTAIN, ET AL., *ante,* p. 830;

No. 92–8802. CURRY *v.* LEDGER PUBLISHING CORP. ET AL., *ante,* p. 836;

No. 92–8853. FITE *v.* CANTRELL ET AL., *ante,* p. 837;

No. 92–8862. NEWTOP *v.* SAN FRANCISCO COUNTY SUPERIOR COURT, *ante,* p. 837;

No. 92–8863. NEWTOP *v.* SAN FRANCISCO COUNTY SUPERIOR COURT, *ante,* p. 837;

No. 92–8864. Newtop *v.* San Francisco County Superior Court, *ante*, p. 838;

No. 92–8918. McQueen *v.* Pollard, *ante*, p. 840;

No. 92–9116. Terrizzi *v.* Stainer, Warden, *ante*, p. 851;

No. 92–9145. Owens *v.* Ashley, *ante*, p. 853;

No. 92–9234. Dempsey *v.* Sears, Roebuck & Co., *ante*, p. 859;

No. 93–5024. Tilli *v.* Board of Review, *ante*, p. 871;

No. 93–5090. Lee *v.* Armontrout, Assistant Director, Missouri Department of Corrections, *ante*, p. 875;

No. 93–5100. Green *v.* Sheffield, Superintendent, Dade Correctional Institution, *ante*, p. 875;

No. 93–5172. Franklin *v.* Witkowski, Warden, et al., *ante*, p. 880;

No. 93–5181. Ward *v.* Berry, Warden, et al., *ante*, p. 880;

No. 93–5183. Mallon *v.* United States, *ante*, p. 880;

No. 93–5193. Barrios *v.* United States, *ante*, p. 881;

No. 93–5594. In re Anderson, *ante*, p. 809;

No. 93–5603. White *v.* International Union Plant Guard Workers, Local No. 166, *ante*, p. 921; and

No. 93–5754. Hornick *v.* United States, *ante*, p. 904. Petitions for rehearing denied.

November 12, 1993

Dismissal Under Rule 46

No. 93–598. Melluzzo et ux. *v.* Babbitt, Secretary of the Interior. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 990 F. 2d 1258.

November 15, 1993

Miscellaneous Orders

No. ———. Germano et ux. *v.* First National Bank of Bethany et al. Motion of petitioners for reconsideration of order of October 4, 1993 [*ante*, p. 802], denied.

No. D–1306. In re Disbarment of Rogers. John I. Rogers III, of Bennettsville, S. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the

Bar of this Court. The rule to show cause, heretofore issued on September 24, 1993 [509 U. S. 949], is hereby discharged.

No. D–1325. In re Disbarment of Savoca. It is ordered that Victor V. Savoca, of Commack, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1326. In re Disbarment of Lobar. It is ordered that Mark Alan Lobar, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1327. In re Disbarment of Wolfe. It is ordered that Mark Gregory Wolfe, of Reston, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1328. In re Disbarment of Carver. It is ordered that Thomas Henry Carver, of Beverly Hills, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1329. In re Disbarment of Krindle. It is ordered that Daniel Jason Krindle, of Beverly Hills, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1330. In re Disbarment of Butler. It is ordered that Vincent Arthur Butler, of Calverton, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 93–5212. O'Connor *v.* Chicago Transit Authority et al. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 807] denied.

No. 93–6082. Coleman *v.* Warner et al. Ct. App. Ohio, Lucas County; and

No. 93-6198. SIMS ET VIR *v.* SUBWAY EQUIPMENT LEASING CORP. ET AL. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 6, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93-6155. HILL *v.* PENNSYLVANIA. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 6, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 93-6430. IN RE PORZIO; and
No. 93-6447. IN RE CAHAN. Petitions for writs of habeas corpus denied.

No. 93-6033. IN RE MANFRED. Petition for writ of mandamus denied.

No. 93-6105. IN RE MANWANI;
No. 93-6201. IN RE CORETHERS; and
No. 93-6202. IN RE CORETHERS. Petitions for writs of mandamus and/or prohibition denied.

No. 93-6114. IN RE BROOKS ET AL. Petition for writ of prohibition denied.

Certiorari Granted

No. 93-445. BEECHAM *v.* UNITED STATES; and JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted. Reported below: 993 F. 2d 1539 (first case) and 1131 (second case).

Certiorari Denied

No. 92-8870. TURNPAUGH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 92-9069. CRANK *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 92-9095. MCCLARY *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 33 Mass. App. 678, 604 N. E. 2d 706.

No. 92–9098. THOMPSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 615 So. 2d 129.

No. 93–138. TEICHER ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 987 F. 2d 112.

No. 93–207. KRAFT ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 991 F. 2d 292.

No. 93–215. SABLONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 989 F. 2d 596.

No. 93–254. GRIMES *v.* OHIO EDISON CO. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 455.

No. 93–278. MOORE *v.* ELI LILLY & CO. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 812.

No. 93–314. BARNES ET AL. *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 1335.

No. 93–422. MEDVIK *v.* CITY OF UNIVERSITY CITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 857.

No. 93–440. WILLIS *v.* UNIVERSITY HEALTH SERVICES, INC., DBA UNIVERSITY HOSPITAL, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 837.

No. 93–456. GUARDINO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 93–459. SHIEH ET AL. *v.* EBERSHOFF ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–467. TILSON *v.* CITY OF WICHITA, KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 253 Kan. 285, 855 P. 2d 911.

No. 93–472. HYDRO ALUMINIUM NORDISK AVIATION PRODUCTS, A/S *v.* TORGESON ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 881.

No. 93–473. DIXIE MACHINE, WELDING & METAL WORKS ET AL. *v.* MOSS. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 617 So. 2d 959.

No. 93–476. MacLeod *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 946 F. 2d 886.

No. 93–477. MacLeod *v.* Virginia Beach Correctional Center et al. C. A. 4th Cir. Certiorari denied. Reported below: 944 F. 2d 901.

No. 93–478. MacLeod *v.* Virginia Beach Correctional Center et al. C. A. 4th Cir. Certiorari denied. Reported below: 948 F. 2d 1281.

No. 93–479. MacLeod *v.* Virginia. Ct. App. Va. Certiorari denied.

No. 93–480. Gonsalves, District Attorney, Kings County, California *v.* Gallegos. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 882.

No. 93–481. Wyatt *v.* Cole et al. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 1113.

No. 93–483. Warfel et al. *v.* Brady, Personal Representative of the Estate of Brady. Ct. Sp. App. Md. Certiorari denied. Reported below: 95 Md. App. 1, 619 A. 2d 171.

No. 93–484. Zady Natey, Inc. *v.* United Food & Commercial Workers, International Union, Local No. 27. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 496.

No. 93–485. Collier et al. *v.* Marshall, Dennehey, Warner, Coleman & Goggin et al. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93–487. Awofolu *v.* Public Storage Management, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 881.

No. 93–488. Smith *v.* Roulette et al. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–492. Johnson *v.* Bekins Van Lines Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 221.

No. 93–494. Sinaloa Lake Owners Assn., Inc., et al. *v.* California Division of Safety of Dams. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 884.

No. 93–499. TAYLOR *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93–500. SIMMONS ET AL. *v.* ROSS. Cir. Ct. Boyd County, Ky. Certiorari denied.

No. 93–501. CAZARES *v.* ELSESSER & RADER ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–509. MARINO *v.* WRITERS' GUILD OF AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1480.

No. 93–534. CITY OF NEW YORK ET AL. *v.* KAM SHING CHAN ET AL.; and

No. 93–535. CHINESE AMERICAN PLANNING COUNCIL, INC. *v.* KAM SHING CHAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 96.

No. 93–556. SAY & SAY ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (CASTELLANO ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–561. MCI TELECOMMUNICATIONS CORP. *v.* CREDIT BUILDERS OF AMERICA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 103.

No. 93–565. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 1299.

No. 93–574. RAMIREZ-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93–579. HEMMERLE, DBA HEMMERLE CONSTRUCTION CO., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SUNRISE SAVINGS & LOAN ASSN. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 606 So. 2d 437.

No. 93–585. BALKISSOON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 525.

No. 93-586. FEDORYK *v.* DUDLEY, JUDGE, CIRCUIT COURT OF MARYLAND, HOWARD COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1062.

No. 93-608. KNIGHT *v.* KNIGHT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1225.

No. 93-5224. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1216.

No. 93-5311. VALENTIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 93-5325. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-5544. HUNT *v.* BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 877.

No. 93-5608. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93-5663. ZIEGENHAGEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1220.

No. 93-5679. BULLARD *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 853 S. W. 2d 921.

No. 93-5701. CAUGHRON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 855 S. W. 2d 526.

No. 93-5711. FAVOR *v.* ARVONIO, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-5726. MARTIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 271.

No. 93-5732. CHARLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 93-5742. ARNOLD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 879.

No. 93-5776. ARCHULETA *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 850 P. 2d 1232.

No. 93–5864. Rhodes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 983 F. 2d 1061.

No. 93–5946. Owens *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 496.

No. 93–6064. Mangrum *v.* Morrison, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93–6094. Sparks *v.* Continental Eagle Corp. et al. Sup. Ct. Ala. Certiorari denied. Reported below: 629 So. 2d 816.

No. 93–6097. Brooke *v.* Duckworth, Superintendent, Indiana State Reformatory, et al. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1549.

No. 93–6106. Lewis *v.* Morris, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 93–6112. Williams *v.* Price, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 548.

No. 93–6113. Sack *v.* Wagoner County, Oklahoma, et al. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93–6115. Andrisani *v.* California et al. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 881.

No. 93–6121. Tanguma *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1237.

No. 93–6131. Wilkerson *v.* Gunn, Warden. Sup. Ct. Cal. Certiorari denied.

No. 93–6135. Gachot *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 609 So. 2d 269.

No. 93–6136. Spindle *v.* Berrong, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93–6143. Stewart *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 620 So. 2d 177.

No. 93–6146. Akins et ux. *v.* Cotton et al. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 215.

No. 93–6147. Howard *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 978 F. 2d 719.

No. 93–6151. Henry *v.* Gulfport Paper Co., Inc. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1013.

No. 93–6152. Harmer *v.* Adkins, Assistant Superintendent, Indiana State Prison, et al. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 1016.

No. 93–6154. Hill *v.* Burd. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 779.

No. 93–6164. Page *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 155 Ill. 2d 232, 614 N. E. 2d 1160.

No. 93–6166. Overstreet *v.* Caspari, Superintendent, Missouri Eastern Correctional Center, et al. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 636.

No. 93–6172. Cruse *v.* Brown et al. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1546.

No. 93–6173. Hughey *v.* Hampton, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1063.

No. 93–6182. Perry *v.* McKune, Warden, et al. Sup. Ct. Kan. Certiorari denied.

No. 93–6185. Goldsmith *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 93–6186. Brooke *v.* Duke et al. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 875.

No. 93–6192. Gorrion *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 548.

No. 93–6194. Osborne et ux. *v.* Ball. Sup. Ct. Tex. Certiorari denied.

No. 93–6199. Strickland *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 541.

No. 93–6204. Byrd *v.* Cubbage. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93–6205. Austin *v.* Linahan, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1555.

No. 93–6223. Delk *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 855 S. W. 2d 700.

No. 93–6228. Torres *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 942 F. 2d 1543 and 991 F. 2d 662.

No. 93–6269. Harris, aka Johnson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 1452.

No. 93–6295. Washington *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 620 So. 2d 777.

No. 93–6296. Smith *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265.

No. 93–6301. Zack *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1021.

No. 93–6302. Schram *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 741.

No. 93–6303. Wicks *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 964.

No. 93–6307. Duncan *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1021.

No. 93–6308. Lechuga *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 994 F. 2d 346.

No. 93–6309. Moreland *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 750.

No. 93–6310. Linberg *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93–6313. Thornton *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 1 F. 3d 149.

No. 93–6314. Montgomery *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1243.

No. 93–6315. MARCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 456.

No. 93–6318. GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 545.

No. 93–6319. KONSTENIUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 1152.

No. 93–6320. HENDRIX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–6322. CORNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1013.

No. 93–6324. BETHEA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1212.

No. 93–6327. HAM, AKA HAMM, AKA BREWER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93–6330. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1064.

No. 93–6331. BUNKER *v.* SAUSER, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER, ALASKA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1223.

No. 93–6332. WHITLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 546.

No. 93–6333. SPEARS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–6339. ALFORD *v.* HUFFMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1223.

No. 93–6348. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–6351. LALOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1578.

No. 93–6356. SIMPSON *v.* ORTIZ, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 606.

No. 93–6361. Hawkins *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 339, 612 N. E. 2d 1227.

No. 93–6363. Henry *v.* New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 133 N. J. 104, 627 A. 2d 125.

No. 93–6365. Hessell *v.* Overton, Warden. C. A. 6th Cir. Certiorari denied.

No. 93–6369. Butcher *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1242.

No. 93–6375. Oviatt *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 125.

No. 93–6377. Okolo *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–6380. Simmons *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 995.

No. 93–6390. Toomey *v.* Iowa Department of Human Services. Sup. Ct. Iowa. Certiorari denied. Reported below: 504 N. W. 2d 633.

No. 93–6401. Pruett *v.* Thompson, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1560.

No. 93–143. North Carolina *v.* Ballard; and North Carolina *v.* Bates. Sup. Ct. N. C. Motions of respondents Lonnie Ballard and Joseph Earl Bates for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 333 N. C. 515, 428 S. E. 2d 178 (first case); 333 N. C. 523, 428 S. E. 2d 693 (second case).

No. 93–318. Consumer Federation of America et al. *v.* United States et al. C. A. D. C. Cir. Certiorari denied. Justice O'Connor took no part in the consideration or decision of this petition. Reported below: 993 F. 2d 1572.

Rehearing Denied

No. 92–1511. Grynberg et al. *v.* United States et al., *ante,* p. 812;

No. 93–88. Fernandes *v.* Rockaway Township Town Council et al., *ante,* p. 863;

No. 93–151. GREENE *v.* NEW YORK STOCK EXCHANGE, INC., ET AL., *ante*, p. 866;

No. 93–161. AMERICOM DISTRIBUTING CORP. *v.* ACS COMMUNICATIONS, INC., *ante*, p. 867;

No. 93–170. EPPERLY ET AL. *v.* UNITED STATES ET AL., *ante*, p. 867;

No. 93–230. MCGOWAN *v.* CROSS ET AL., *ante*, p. 909;

No. 93–5164. TYLER *v.* MOORE ET AL., *ante*, p. 879;

No. 93–5277. TYLER *v.* GEILER ET AL., *ante*, p. 885; and

No. 93–5636. IN RE COOPER ET UX., *ante*, p. 809. Petitions for rehearing denied.

NOVEMBER 16, 1993

Dismissal Under Rule 46

No. 93–531. FUJIKAWA ET AL. *v.* PML SECURITIES CO. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.

NOVEMBER 17, 1993

Dismissals Under Rule 46

No. 93–530. KING ET AL. *v.* E. I. DU PONT DE NEMOURS & CO. ET AL. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 996 F. 2d 1346.

No. 93–337. GENERAL CHEMICAL CORP. *v.* DE LA LASTRA ET AL. Sup. Ct. Tex. Certiorari dismissed under this Court's Rule 46.1. Reported below: 852 S. W. 2d 916.

NOVEMBER 18, 1993

Dismissal Under Rule 46

No. 92–1646. FORMBY *v.* UNITED STATES [and other cases under this Court's Rule 12.2]. Certiorari dismissed as to petitioner James Formby under this Court's Rule 46.1. Reported below: 37 M. J. 268.

NOVEMBER 22, 1993

Dismissal Under Rule 46

No. 92–1274. ANAGO INC. *v.* TECNOL MEDICAL PRODUCTS, INC. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 976 F. 2d 248.

NOVEMBER 29, 1993

Certiorari Granted—Vacated and Remanded

No. 93–5382. MAHON *v.* COUNTY OF LOS ANGELES ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Antoine* v. *Byers & Anderson, Inc.*, 508 U. S. 429 (1993).

Miscellaneous Orders

No. ———. SPILLER ET AL. *v.* MAINE ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. D–1294. IN RE DISBARMENT OF SPIES. Disbarment entered. [For earlier order herein, see 509 U. S. 944.]

No. D–1299. IN RE DISBARMENT OF MATTHEWS. Disbarment entered. [For earlier order herein, see 509 U. S. 948.]

No. D–1300. IN RE DISBARMENT OF STROMER. Disbarment entered. [For earlier order herein, see 509 U. S. 948.]

No. D–1302. IN RE DISBARMENT OF WILLIS. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1303. IN RE DISBARMENT OF BLAKE. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1305. IN RE DISBARMENT OF THRASHER. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1307. IN RE DISBARMENT OF SHENBERG. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1308. IN RE DISBARMENT OF GOODHART. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1310. IN RE DISBARMENT OF ZWEIBON. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1311. IN RE DISBARMENT OF GHOBASHY. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1312. IN RE DISBARMENT OF RABINOWITZ. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1313. IN RE DISBARMENT OF RUBIN. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1314. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1315. IN RE DISBARMENT OF HUTCHESON. Kent Hutcheson, of Nauvoo, Ill., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on October 18, 1993 [*ante*, p. 929], is hereby discharged.

No. D–1331. IN RE DISBARMENT OF O'LEARY. It is ordered that Joseph J. O'Leary, of Canton, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1332. IN RE DISBARMENT OF DAYS. It is ordered that John Wesley Days, of Silver Spring, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1333. IN RE DISBARMENT OF SHARP. It is ordered that Stephen Alan Sharp, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 8, Orig. ARIZONA *v.* CALIFORNIA ET AL. Joint motion of the parties to suspend the briefing schedule set by order of the Court on October 18, 1993 [*ante*, p. 930], granted. [For earlier order herein, see, *e. g., ante*, p. 930.]

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for award of fees and expenses granted, and the River Master is awarded a total of $535.54 for the period July 1 through September 30, 1993, to be paid equally by the parties. [For earlier order herein, see, *e. g., ante*, p. 805.]

No. 92–8346. SHANNON *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, *ante*, p. 943.] Motion for appointment of counsel granted, and it is ordered that Thomas R. Trout, Esq., of

New Albany, Miss., be appointed to serve as counsel for petitioner in this case.

No. 92–8822. Johnson *v.* California, *ante,* p. 836. Respondent is requested to file a response to the petition for rehearing within 30 days.

No. 93–781. Sinkfield et al. *v.* Wesch et al. C. A. 11th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 93–6747. Thigpen et al. *v.* United States. C. A. 11th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 93–6250. Bruce *v.* California Department of Corrections et al. C. A. 9th Cir.;

No. 93–6253. Allum *v.* Second Judicial District Court of Nevada et al. Sup. Ct. Nev.; and

No. 93–6293. Williams et ux. *v.* Seeber et al. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 20, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–6273. Antonelli *v.* O'Malley. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 20, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 93–5204. In re Routt; and

No. 93–6642. In re Monroe. Petitions for writs of habeas corpus denied.

No. 93–6175. In re Conboy; and

No. 93–6291. In re Newtop. Petitions for writs of mandamus denied.

No. 93–557. In re Johnson; and

No. 93–6203. In re Corethers. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–489. O'Melveny & Myers *v.* Federal Deposit Insurance Corporation, as Receiver for American Diversified Savings Bank, et al. C. A. 9th Cir. Certiorari granted. Reported below: 969 F. 2d 744.

No. 93–356. MCI Telecommunications Corp. *v.* American Telephone & Telegraph Co.; and

No. 93–521. United States et al. *v.* American Telephone & Telegraph Co. et al. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Justice O'Connor took no part in the consideration or decision of these petitions.

No. 93–517. Board of Education of Kiryas Joel Village School District *v.* Grumet et al.;

No. 93–527. Board of Education of Monroe-Woodbury Central School District *v.* Grumet et al.; and

No. 93–539. Attorney General of New York *v.* Grumet et al. Ct. App. N. Y. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 81 N. Y. 2d 518, 618 N. E. 2d 94.

No. 93–518. Dolan *v.* City of Tigard. Sup. Ct. Ore. Motions for leave to file briefs as *amici curiae* filed by the following are granted: Northwest Legal Foundation, Pacific Legal Foundation et al., National Association of Home Builders et al., Mountain States Legal Foundation et al., Washington Legal Foundation et al., and Oregon Association of Realtors. Certiorari granted. Reported below: 317 Ore. 110, 854 P. 2d 437.

No. 93–6497. McFarland *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition. Reported below: 7 F. 3d 47.

Certiorari Denied

No. 92–9146. Vaksman *v.* University of Houston Board of Trustees et al. C. A. 5th Cir. Certiorari denied. Reported below: 986 F. 2d 1418.

No. 93–116. Faloon et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 510.

No. 93–226. Pardee & Curtin Lumber Co. et al. *v.* Webster County Commission. Cir. Ct. Webster County, W. Va. Certiorari denied.

No. 93–249. Chagra et al. *v.* Commissioner of Internal Revenue. C. A. 2d Cir. Certiorari denied. Reported below: 990 F. 2d 1250.

No. 93–288. Exxon Corp. et al. *v.* Boyle, Administrator, New Jersey Spill Compensation Fund, et al. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 262 N. J. Super. 264, 620 A. 2d 1068.

No. 93–305. Blankstyn *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1255.

No. 93–324. Digitron Packaging, Inc. *v.* National Labor Relations Board. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1066.

No. 93–332. Michigan Municipal Cooperative Group et al. *v.* Federal Energy Regulatory Commission et al. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1377.

No. 93–336. Barnett *v.* Internal Revenue Service. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1449.

No. 93–339. Burke, Personal Representative of the Estate of Williams, Deceased *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 994 F. 2d 1576.

No. 93–342. Mercantile Employees' Beneficiary Association Trust et al. *v.* Bank One, Texas, N. A., et al. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 324.

No. 93–348. PGDH Liquidating Trust, as Successor-in-Interest to Prince George's Hospital, Inc., t/a Doctors' Hospital of Prince George's County *v.* Shalala, Secretary of Health and Human Services. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 228.

No. 93–366. Mouawad *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93–369. Williams *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 646.

No. 93–372. Sam's Wholesale Club et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 508.

No. 93–373. Board of Education of the Borough of Englewood Cliffs *v.* Board of Education of the City of Englewood et al. Sup. Ct. N. J. Certiorari denied. Reported below: 132 N. J. 327, 625 A. 2d 483.

No. 93–382. Butts *v.* Ohio; and
No. 93–555. Ohio *v.* Butts. Ct. App. Ohio, Miami County. Certiorari denied.

No. 93–400. New York City Transit Authority *v.* McCummings. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 923, 613 N. E. 2d 559.

No. 93–420. Green *v.* North Carolina Department of Transportation, Division of Motor Vehicles. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1537.

No. 93–421. Eichelberger et al. *v.* Balette et al. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 841 S. W. 2d 508.

No. 93–424. Trinity Industries, Inc. *v.* Shipes et al. C. A. 5th Cir. Certiorari denied. Reported below: 987 F. 2d 311.

No. 93–449. Platt *v.* Ihle et al. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1212.

No. 93–455. Killeen et al. *v.* Hallstrom. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 1473.

No. 93–460. Baughman, aka Boughman *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 311 S. C. 547, 430 S. E. 2d 505.

No. 93–482. Weichert *v.* Richards, Administrator, Federal Aviation Administration. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93–491. Crosthwait Equipment Co., Inc., et al. *v.* John Deere Co. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 525.

No. 93-502. IN RE CORDOVA-GONZALEZ. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 1334.

No. 93-516. HEARTLAND FEDERAL SAVINGS & LOAN ASSN. *v.* BRISCOE ENTERPRISES, LTD., II. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 1160.

No. 93-519. FEDERAL ELECTION COMMISSION *v.* LAROUCHE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 996 F. 2d 1263.

No. 93-520. GEOFFREY, INC. *v.* SOUTH CAROLINA DEPARTMENT OF REVENUE AND TAXATION. Sup. Ct. S. C. Certiorari denied. Reported below: 313 S. C. 15, 437 S. E. 2d 13.

No. 93-522. HURWITZ *v.* PERALES, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 182, 613 N. E. 2d 163.

No. 93-524. LONG ISLAND RAIL ROAD CO. *v.* BATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 997 F. 2d 1028.

No. 93-525. WORLDWIDE INSURANCE MANAGEMENT CORP. *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER FOR METROPOLITAN FINANCIAL FEDERAL SAVINGS & LOAN ASSN. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 325.

No. 93-526. HERNANDEZ *v.* KMART CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93-528. GESKE & SONS, INC. *v.* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 236 Ill. App. 3d 1110, 655 N. E. 2d 331.

No. 93-529. LAWLINE ET AL. *v.* AMERICAN BAR ASSN. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 956 F. 2d 1378.

No. 93-532. REYER *v.* TODD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1259.

No. 93-533. CAMOSCIO *v.* DONAHUE, ASSOCIATE JUSTICE, SUPERIOR COURT OF MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 93–536. ECHLIN *v.* LECUREUX, WARDEN; and
No. 93–6317. JOHNSON *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1344.

No. 93–537. YUTER *v.* TANDEM COMPUTERS INC. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1502.

No. 93–540. SUNDWALL *v.* GENERAL BUILDING SUPPLY CO. App. Ct. Conn. Certiorari denied.

No. 93–544. MOLINA DE HERNANDEZ *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 93–545. LAZIRKO *v.* BRICKMAN-ABEGGLEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 1402, 605 N. E. 2d 1260.

No. 93–547. FRONTIER PILOTS LITIGATION STEERING COMMITTEE *v.* TEXAS AIR CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1003.

No. 93–549. LIFSCHULTZ FAST FREIGHT, INC. *v.* CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1009.

No. 93–550. J. Z. G. RESOURCES, INC. *v.* SHELBY INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 987 F. 2d 98.

No. 93–554. VELAZQUEZ ET AL. *v.* FIGUEROA-GOMEZ ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 425.

No. 93–570. LANDGRAF, EXECUTRIX OF THE ESTATE OF LANDGRAF, DECEASED *v.* MCDONNELL DOUGLAS HELICOPTER CO. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 558.

No. 93–573. WESTFALL *v.* SOUTHWEST AIRLINES CO. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 882.

No. 93–576. RIMMER *v.* OCTAGON GAS SYSTEMS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 948.

No. 93–581. FLETCHER *v.* KIDDER, PEABODY & CO., INC. Ct. App. N. Y. Certiorari denied. Reported below: 81 N. Y. 2d 623, 619 N. E. 2d 998.

No. 93-600. JOHN MORRELL & CO. *v.* UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 304A, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 992 F. 2d 205.

No. 93-601. MOYER PACKING CO. ET AL. *v.* PETRUZZI'S IGA SUPERMARKETS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1224.

No. 93-610. MCDONALD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 994 F. 2d 970.

No. 93-616. UNITED KEETOOWAH BAND OF CHEROKEE INDIANS *v.* OKLAHOMA TAX COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 1073.

No. 93-624. ORR *v.* GENERAL MOTORS CORP., R. P. A., DAYTON-NORWOOD OPERATION. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1067.

No. 93-625. SCHMIDLING ET AL. *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 494.

No. 93-647. MAGNOLIA BAR ASSN., INC., ET AL. *v.* HAWKINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 1143.

No. 93-649. HOLDEN *v.* REGIONAL AIRPORT AUTHORITY OF LOUISVILLE AND JEFFERSON COUNTY, KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93-664. KIRATLI *v.* ERSAN RESOURCES, INC., ET AL.; and OZEY *v.* ERSAN RESOURCES, INC., ET AL. C. A. 4th Cir. Certiorari denied.

No. 93-5096. MULLINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1472.

No. 93-5099. KIRSH ET VIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93-5171. KNIGHT *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 989 F. 2d 619.

No. 93-5284. JOHNSON-JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93-5299. Kendall *v.* Kendall. Ct. App. Wash. Certiorari denied. Reported below: 67 Wash. App. 1001.

No. 93-5377. Swinney *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 983 F. 2d 1069.

No. 93-5485. Spears *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-5532. Washington *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93-5539. Animashaun *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 234.

No. 93-5568. Gambrah *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93-5660. Nyberg *v.* Snover et al. C. A. 11th Cir. Certiorari denied.

No. 93-5683. Sloan *v.* United States;
No. 93-5699. Daniels et al. *v.* United States;
No. 93-5750. Gray *v.* United States; and
No. 93-5895. Henry *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 988 F. 2d 750.

No. 93-5696. Maxwell *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 534 Pa. 23, 626 A. 2d 499.

No. 93-5703. Myre *v.* Iowa. Ct. App. Iowa. Certiorari denied. Reported below: 507 N. W. 2d 419.

No. 93-5718. Rutulante *v.* Gomez, Director, California Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93-5722. Rupp *v.* Department of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 991 F. 2d 810.

No. 93-5778. Brown *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93-5803. Henderson *v.* Bank of New England. C. A. 9th Cir. Certiorari denied. Reported below: 986 F. 2d 319.

No. 93–5842. BRYANT *v.* MUTH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 994 F. 2d 1082.

No. 93–5843. BENAVIDES *v.* BUREAU OF PRISONS. C. A. D. C. Cir. Certiorari denied. Reported below: 993 F. 2d 257.

No. 93–5867. DESAMOUR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1005.

No. 93–5870. BARNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1539.

No. 93–5892. SAMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93–5894. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1456.

No. 93–5906. HODGES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 619 So. 2d 272.

No. 93–5991. SANTANA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93–6088. HARRIS *v.* SULLIVAN, ACTING SECRETARY OF THE ARMY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93–6098. DE LA GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93–6099. SMITH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 857 S. W. 2d 1.

No. 93–6168. PHILLIPS *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 1552.

No. 93–6178. GROOMS *v.* MOBAY CHEMICAL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1537.

No. 93–6183. MOORHEAD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–6195. MAURER *v.* KOENIG, COMMISSIONER, CALIFORNIA BOARD OF PRISON TERMS. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93–6200. TRELLEZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 189 App. Div. 2d 906, 593 N. Y. S. 2d 63.

No. 93–6206. DE LOS SANTOS FERRER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 999 F. 2d 7.

No. 93–6207. GRIM *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 854 S. W. 2d 403.

No. 93–6211. NAUGLE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 997 F. 2d 819.

No. 93–6218. TURNER *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1212.

No. 93–6226. SCHOKA *v.* SHERIFF, WASHOE COUNTY, NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1415, 875 P. 2d 1077.

No. 93–6227. WARD *v.* PETERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1220.

No. 93–6233. WINFIELD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–6234. BOROS *v.* BAXLEY ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 621 So. 2d 240.

No. 93–6235. ELLIOTT, AKA YBARRA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 858 S. W. 2d 478.

No. 93–6237. JOHNSON, AKA VAN DER JAGT *v.* SOUTH MAIN BANK. Sup. Ct. Tex. Certiorari denied.

No. 93–6238. GOSSETT *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 978 F. 2d 705.

No. 93–6241. GOFF *v.* DAILEY, DEPUTY SUPERINTENDENT, CORRECTIONAL TREATMENT UNIT AT CLARINDA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 1437.

No. 93–6242. JAAKKOLA *v.* STATE INDUSTRIAL INSURANCE SYSTEM. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1402, 875 P. 2d 1064.

No. 93–6254. SLABOCHOVA *v.* WESTFIELD INSURANCE CO. ET AL. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 93–6256. SPREMO *v.* DURANTE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93–6260. MITCHELL *v.* KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93–6262. PEARSALL *v.* PHILLIPS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1234.

No. 93–6264. McKEE *v.* NIX, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 833.

No. 93–6265. NELSON *v.* NEUBERT, ADMINISTRATOR, BAYSIDE STATE PRISON. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1004.

No. 93–6268. GOLDBERG *v.* CLEVELAND CLINIC, FLORIDA. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1489.

No. 93–6271. BARTON *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 985 F. 2d 556.

No. 93–6272. BROWN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 262 Ga. 728, 425 S. E. 2d 856.

No. 93–6279. MARTIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1018.

No. 93–6280. RUPERT *v.* SOLEY. Sup. Jud. Ct. Me. Certiorari denied.

No. 93–6286. OMASTA *v.* STOKES ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 623 So. 2d 503.

No. 93–6288. WOHLFORD ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–6292. HINES *v.* THURMAN, WARDEN. Sup. Ct. Cal. Certiorari denied.

No. 93–6299. SCHWARZ *v.* OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY. C. A. D. C. Cir. Certiorari denied.

No. 93-6304. GALAN *v.* GEGENHEIMER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 305.

No. 93-6311. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93-6312. MANS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 966.

No. 93-6335. ABATE *v.* AVENENTI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1255.

No. 93-6340. CORETHERS *v.* STATE OF OHIO PROSECUTOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 93-6341. CUMMINGS *v.* HUGHES ET AL. C. A. 6th Cir. Certiorari denied.

No. 93-6342. ANDERSON *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93-6347. THORNE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 997 F. 2d 1504.

No. 93-6349. BROOKS *v.* BERGMAN. C. A. 7th Cir. Certiorari denied.

No. 93-6357. SWENSON *v.* TRICKEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 132.

No. 93-6358. DEGLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 403.

No. 93-6359. WIATER *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1550.

No. 93-6368. TISDALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93-6386. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1579.

No. 93-6387. BROCKSMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 1363.

No. 93-6394. RIDEOUT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 3 F. 3d 32.

No. 93-6395. PALAZZOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1248.

No. 93-6396. ROBINSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 998 F. 2d 1025.

No. 93-6397. MEANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 545.

No. 93-6398. POLANCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93-6399. PARKER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 383, 849 P. 2d 1062.

No. 93-6400. ONWUASOANYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 880.

No. 93-6404. WILLIAMS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 622 So. 2d 456.

No. 93-6405. SHELTON ET AL. *v.* SCOTT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93-6406. SHELBY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1265.

No. 93-6412. SAVAGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93-6416. CAMACHO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93-6417. SCIRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 536.

No. 93-6418. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1023.

No. 93-6419. REVELS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93-6420. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1583.

No. 93-6422. NUTTLE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1063.

No. 93–6424. Hannah *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–6425. Forde, aka Taylor, aka Hescott *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 986.

No. 93–6428. Stephens *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93–6429. Byfield *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 1 F. 3d 45.

No. 93–6436. English *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 609.

No. 93–6439. Frost *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 999 F. 2d 737.

No. 93–6440. Arias Villanueva *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 1491.

No. 93–6444. Hanif, aka Noor *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 998.

No. 93–6446. Emra *v.* Maass, Superintendent, Oregon State Penitentiary. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 542.

No. 93–6449. Plancarte-Raya *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 1491.

No. 93–6451. Lawson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 985.

No. 93–6452. Finn, aka Dupree *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1019.

No. 93–6453. Costa *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1221.

No. 93–6456. Corey *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 493.

No. 93–6464. Willis *v.* Rison, Warden, et al. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1007.

No. 93–6465. DOPICO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 404.

No. 93–6467. CIANCA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1541.

No. 93–6470. MUZINGO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 361.

No. 93–6483. MCFARLAND *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–6484. SIMMONS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 95 Md. App. 741.

No. 93–6485. MUNIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1018.

No. 93–6488. PAZEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 781.

No. 93–6489. LOVETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1250.

No. 93–6490. MCWHORTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–6504. MOREJON-GOMEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93–6505. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1579.

No. 93–6514. WILLIAMS *v.* FOWLER ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–6525. PLEDGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1583.

No. 93–6526. OAKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 439.

No. 93–6529. MANTILLA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1006.

No. 93–6530. NIX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 49.

No. 93–6531. Neku *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 620 A. 2d 259.

No. 93–6536. Merkl *v.* Hardy et al. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 799.

No. 93–6541. Kaba *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 47.

No. 93–6561. Smith *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 2d 595.

No. 93–6564. Graham *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1197.

No. 93–319. Rasch *v.* National Railroad Passenger Corporation, dba Amtrak. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition. Reported below: 993 F. 2d 913.

No. 93–615. Atkins *v.* United States. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition. Reported below: 993 F. 2d 913.

No. 93–5990. Abdullah *v.* Federal Bureau of Investigation. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition.

No. 93–6458. Freeman *v.* United States. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition. Reported below: 995 F. 2d 305.

No. 93–432. Morales, Deceased, et al. *v.* Barge-Wagener Construction Co. et al. Sup. Ct. Ga. Motions of National Employment Lawyers Association and United States of Mexico et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 263 Ga. 190, 429 S. E. 2d 671.

No. 93–451. Whitley et al. *v.* Standen. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 994 F. 2d 1417.

No. 93–510. Aetna Life Insurance Co. et al. *v.* Stuart Circle Hospital Corp. C. A. 4th Cir. Motions for leave to file briefs as *amici curiae* filed by the following are granted: Metropolitan Life Insurance Co., CIGNA, Travelers Insurance Co. et al., Association of Private Pension and Welfare Benefit Plans, National Coordinating Committee for Multiemployer Plans, Connecticut Business and Industry Association, American Council of Life Insurance, Group Health Association of America, Inc., and Health Insurance Association of America et al. Certiorari denied. Reported below: 995 F. 2d 500.

No. 93–559. COLORADO STATE BOARD OF AGRICULTURE, IN ITS CAPACITY AS THE GOVERNING BOARD OF THE COLORADO STATE UNIVERSITY *v.* ROBERTS ET AL. C. A. 10th Cir. Motions of Alabama Association of School Boards et al., Brown University et al., and American Council on Education et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 998 F. 2d 824.

No. 93–562. MCMANUS *v.* IOWA ET AL. Sup. Ct. Iowa. Certiorari denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition. Reported below: 499 N. W. 2d 726.

No. 93–6407. GAFFNEY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 92–1806. MEYER *v.* LELSZ ET AL., *ante,* p. 906;

No. 92–1827. BONA *v.* CHAVEZ ET AL., *ante,* p. 815;

No. 92–1869. BULLWINKLE *v.* ALASKA, *ante,* p. 817;

No. 92–1881. THOMSEN *v.* JUVENILE DEPARTMENT OF WASHINGTON COUNTY ET AL., *ante,* p. 818;

No. 92–1997. CARTER *v.* CERTIFIED GROCERS OF CALIFORNIA, LTD., *ante,* p. 825;

No. 92–2027. WOODS *v.* UNITED STATES, *ante,* p. 826;

No. 92–2045. SMITH ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES; and CLAYBORN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante,* p. 930;

No. 92–2061. SCIENTIFIC-ATLANTA, INC. *v.* HENDERSON ET AL., *ante,* p. 828;

No. 92–8182. ABDULLAH *v.* NEBRASKA, *ante,* p. 829;

No. 92–8474. MILLER-EL *v.* TEXAS, *ante,* p. 831;

No. 92–8732. BRANNON *v.* LAMAINA, *ante,* p. 833;

No. 92–8766. JOHNSON *v.* DETROIT COLLEGE OF LAW ET AL., *ante,* p. 834;

No. 92–8776. ROSE *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 835;

No. 92–8867. BURNS *v.* TEXAS, *ante,* p. 838;

No. 92–8871. YOUNG *v.* GROOSE, WARDEN, *ante,* p. 838;

No. 92–8941. HUFF *v.* ABC ENTERPRISES, INC., *ante,* p. 841;

No. 92–8947. CORRIGAN *v.* TOMPKINS ET AL., *ante,* p. 842;

No. 92–8949. HARRIS *v.* COUNTY OF SACRAMENTO, CALIFORNIA, ET AL., *ante,* p. 842;

No. 92–8952. SCHULTZ *v.* WISCONSIN, *ante,* p. 842;

No. 92–8972. HELMS *v.* REYNOLDS, WARDEN, ET AL., *ante,* p. 843;

No. 92–8999. BOUNDS *v.* UNITED STATES, *ante,* p. 845;

No. 92–9025. STEELE *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, *ante,* p. 846;

No. 92–9041. BURGER *v.* ZANT, WARDEN, *ante,* p. 847;

No. 92–9077. CLARK *v.* NAGLE, WARDEN, ET AL., *ante,* p. 849;

No. 92–9106. FOX *v.* HUTTON ET AL., *ante,* p. 851;

No. 92–9168. SCOTT *v.* TYSON FOODS, INC., *ante,* p. 854;

No. 92–9179. IN RE NKOP, *ante,* p. 809;

No. 92–9192. MCFALL *v.* WILKINSON ET AL., *ante,* p. 856;

No. 92–9193. LANE *v.* RAMEY ET AL., *ante,* p. 856;

No. 92–9202. CRAYTON *v.* KENTUCKY, *ante,* p. 856;

No. 92–9203. AGRON *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante,* p. 857;

No. 92–9235. CATO *v.* MORALES, ATTORNEY GENERAL OF TEXAS, ET AL., *ante,* p. 859;

No. 93–20. JOHNSTON *v.* ZEFF & ZEFF ET AL., *ante,* p. 860;

No. 93–26. DUNCAN *v.* COBB ET AL., *ante,* p. 860;

No. 93–40. SCINTO *v.* STAMM ET AL., *ante,* p. 861;

No. 93–42. MITCHELL ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante,* p. 861;

No. 93–124. MICK ET AL. *v.* RESOLUTION TRUST CORPORATION, CONSERVATOR FOR IRVING FEDERAL SAVINGS & LOAN ASSN., *ante,* p. 865;

No. 93–153. ARNOLD, AKA AHMAD *v.* LEONARD ET AL., *ante,* p. 866;

No. 93-200. COWHIG *v.* STONE, SECRETARY OF THE ARMY, ET AL., *ante*, p. 869;

No. 93-237. MALONEY *v.* UNITED STATES ET AL., *ante*, p. 915;

No. 93-243. JAMES ET AL. *v.* CITY OF LIVONIA ET AL., *ante*, p. 915;

No. 93-354. LOOMIS *v.* WALLIS & SHORT, P. C., *ante*, p. 918;

No. 93-368. DUNNING *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 918;

No. 93-5010. RUCHMAN ET AL. *v.* WOLFF ET AL., *ante*, p. 871;

No. 93-5011. POMPE *v.* CITY OF YONKERS ET AL., *ante*, p. 871;

No. 93-5030. BROWN *v.* CHICOPEE FIRE FIGHTERS, LOCAL 1710, IAFF, ET AL., *ante*, p. 872;

No. 93-5058. DEOBLER *v.* KINTZELE ET AL., *ante*, p. 873;

No. 93-5112. LOUCKS ET AL. *v.* PHILLIPS PETROLEUM CO., *ante*, p. 876;

No. 93-5116. PARTEE *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 877;

No. 93-5124. JOHNSON *v.* HARDCASTLE ET AL., *ante*, p. 877;

No. 93-5130. ALCALA *v.* CALIFORNIA, *ante*, p. 877;

No. 93-5198. LORENZO *v.* UNITED STATES, *ante*, p. 881;

No. 93-5287. WILLIAMS ET VIR *v.* TRUMBAUER ET AL., *ante*, p. 886;

No. 93-5295. ATHERTON *v.* VIRGINIA, *ante*, p. 886;

No. 93-5300. HALEY *v.* BORG, WARDEN, ET AL., *ante*, p. 886;

No. 93-5316. DEMAURO *v.* COLDWELL, BANKER & CO. ET AL., *ante*, p. 887;

No. 93-5347. WALTON *v.* ARIZONA, *ante*, p. 889;

No. 93-5383. RAMSEY *v.* OFFICE OF THE STATE ENGINEER ET AL., *ante*, p. 890;

No. 93-5388. WEAVER *v.* KAYE ET AL., *ante*, p. 891;

No. 93-5389. WEAVER *v.* STRINE ET AL., *ante*, p. 891;

No. 93-5433. SIEGEL *v.* BERKHEIMER ASSOCIATES, *ante*, p. 893;

No. 93-5479. SHAW *v.* MISSOURI, *ante*, p. 895;

No. 93-5558. GACY *v.* WELBORN, WARDEN, ET AL., *ante*, p. 899;

No. 93-5583. SWAIN *v.* DETROIT BOARD OF EDUCATION, *ante*, p. 920;

No. 93-5624. WHITSON *v.* HILLHAVEN WEST, INC., ET AL., *ante*, p. 921;

No. 93-5633. O'DONNELL *v.* AMERICAN CAREER TRAINING CORP. ET AL., *ante*, p. 921;

No. 93–5648. Barker *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division, *ante,* p. 922;

No. 93–5725. Vollbrecht *v.* Wisconsin, *ante,* p. 923;

No. 93–5733. In re Campbell, *ante,* p. 912;

No. 93–5772. Cherry *v.* Ratelle, Warden, et al., *ante,* p. 924;

No. 93–5773. DeRosa *v.* New York, *ante,* p. 924;

No. 93–5837. Anderson *v.* United States, *ante,* p. 926; and

No. 93–5987. Paul *v.* Commissioner of Internal Revenue, *ante,* p. 936. Petitions for rehearing denied.

No. 92–1947. Woods *v.* AT&T Information Systems et al., *ante,* p. 907. Petition for rehearing denied. Justice O'Connor took no part in the consideration or decision of this petition.

No. 93–222. McCoo *v.* District of Columbia, *ante,* p. 928. Petition for rehearing denied. Justice Ginsburg took no part in the consideration or decision of this petition.

December 6, 1993

Certiorari Granted—Vacated and Remanded

No. 93–73. Immigration and Naturalization Service et al. *v.* Legalization Assistance Project of Los Angeles County Federation of Labor et al. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Heller* v. *Doe,* 509 U. S. 312 (1993), and *Reno* v. *Catholic Social Services, Inc.,* 509 U. S. 43 (1993). Reported below: 976 F. 2d 1198.

Miscellaneous Orders

No. ———. Rettig et al. *v.* Ohio et al. Motion for reconsideration of order denying leave to file bill of complaint [*ante,* p. 929] denied.

No. ———. Lawson *v.* Connecticut et al. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ———. Figures *v.* Figures. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [*ante,* p. 960] denied.

No. A–324. JERREL *v.* ALASKA. Application for stay of enforcement of judgment, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. A–422. IN RE DEVERS. Sup. Ct. Ore. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1304. IN RE DISBARMENT OF KUMMER. Disbarment entered. [For earlier order herein, see 509 U. S. 949.]

No. D–1334. IN RE DISBARMENT OF BOYNE. It is ordered that Gilbert Wentworth Boyne, of Modesto, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 92–989. TENNESSEE *v.* MIDDLEBROOKS; and TENNESSEE *v.* EVANS. Sup. Ct. Tenn. [Certiorari granted, 507 U. S. 1028.] Motion of respondent Donald Middlebrooks for leave to file a supplemental brief after argument granted.

No. 92–1639. CITY OF CHICAGO ET AL. *v.* ENVIRONMENTAL DEFENSE FUND ET AL. C. A. 7th Cir. [Certiorari granted, 509 U. S. 903.] Motion of respondents for reconsideration of the Solicitor General's motion for leave to participate in oral argument as *amicus curiae* and for divided argument [*ante,* p. 961] denied.

No. 92–1956. CONSOLIDATED RAIL CORPORATION *v.* GOTTSHALL; and CONSOLIDATED RAIL CORPORATION *v.* CARLISLE. C. A. 3d Cir. [Certiorari granted, *ante,* p. 912.] Motions of Association of American Railroads, Washington Legal Foundation, and Product Liability Advisory Council, Inc., for leave to file briefs as *amici curiae* granted.

No. 92–8894. VICTOR *v.* NEBRASKA. Sup. Ct. Neb. [Certiorari granted, 509 U. S. 954]; and

No. 92–9049. SANDOVAL *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, 509 U. S. 954.] Motion of respondent California for divided argument granted.

No. 92–9059. SIMMONS *v.* SOUTH CAROLINA. Sup. Ct. S. C. [Certiorari granted, *ante,* p. 811.] Motion of Donna L. Markle et al. for leave to file a brief as *amici curiae* granted.

No. 93–144. DEPARTMENT OF REVENUE OF MONTANA *v.* KURTH RANCH ET AL. C. A. 9th Cir. [Certiorari granted, 509 U. S. 953.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–445. BEECHAM *v.* UNITED STATES; and JONES *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante,* p. 975.] Motion of petitioner Kirby Lee Jones for leave to proceed further herein *in forma pauperis* granted.

No. 93–5770. STANSBURY *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante,* p. 943.] Motion for appointment of counsel granted, and it is ordered that Robert M. Westberg, Esq., of San Francisco, Cal., be appointed to serve as counsel for petitioner in this case.

No. 93–6261. MCMANUS ET AL. *v.* HOUSING AUTHORITY OF THE CITY OF ENGLEWOOD ET AL. C. A. 3d Cir.;
No. 93–6328. FEE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 3d Cir.;
No. 93–6438. COKER *v.* GEORGIA ET AL. C. A. 11th Cir.; and
No. 93–6441. COKER *v.* GEORGIA ET AL. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 27, 1993, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–6878. YOUNG *v.* STEPANIK ET AL. C. A. 3d Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 93–6714. IN RE HARRIS. Petition for writ of habeas corpus denied.

No. 93–5619. IN RE SANDERS. Petition for writ of mandamus denied.

No. 93–6475. IN RE STEEL. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–397. ASSOCIATED INDUSTRIES OF MISSOURI ET AL. *v.* LOHMAN, DIRECTOR OF REVENUE OF MISSOURI, ET AL. Sup. Ct. Mo. Certiorari granted. Reported below: 857 S. W. 2d 182.

No. 93–5131. TUILAEPA *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition. Case consolidated with No. 93–5161, *Proctor* v. *California*, immediately *infra*, and a total of 90 minutes allotted for oral argument. Reported below: 4 Cal. 4th 569, 842 P. 2d 1142.

No. 93–5161. PROCTOR *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Case consolidated with No. 93–5131, *Tuilaepa* v. *California*, immediately *supra*, and a total of 90 minutes allotted for oral argument. Reported below: 4 Cal. 4th 499, 842 P. 2d 1100.

Certiorari Denied

No. 92–1832. PENNSYLVANIA *v.* MATTHEWS. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 636, 616 A. 2d 717.

No. 93–96. ROGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1217.

No. 93–335. LEDBETTER, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 986 F. 2d 428.

No. 93–345. SCHEFFEY *v.* RESOLUTION TRUST CORPORATION, RECEIVER FOR HERITAGE FEDERAL SAVINGS & LOAN ASSN. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 490.

No. 93–387. MARVICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1263.

No. 93–388. PENNSYLVANIA OFFICE OF THE BUDGET *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 996 F. 2d 1505.

No. 93–416. BANFF, LTD. *v.* COLBERTS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 33.

No. 93–470. SANDERS *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 116.

No. 93–486. Kelly et al. *v.* Merrill Lynch, Pierce, Fenner & Smith, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 985 F. 2d 1067.

No. 93–490. Prince George's County, Maryland *v.* Kirsch et al. Ct. App. Md. Certiorari denied. Reported below: 331 Md. 89, 626 A. 2d 372.

No. 93–506. Wiley *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 997 F. 2d 378.

No. 93–563. Stratemeyer *v.* Lincoln County, Montana, et al. Sup. Ct. Mont. Certiorari denied. Reported below: 259 Mont. 147, 855 P. 2d 506.

No. 93–566. Westbrook *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 15 Cal. App. 4th 41, 18 Cal. Rtpr. 2d 617.

No. 93–568. Allied Products Corp. *v.* Renkiewicz, Personal Representative of the Estate of Renkiewicz, Deceased, et al. Ct. App. Mich. Certiorari denied. Reported below: 196 Mich. App. 309, 492 N. W. 2d 820.

No. 93–572. Fruehauf Corp. *v.* Still, Trustee for Southwest Equipment Rental, Inc., dba Southwest Motor Freight. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1242.

No. 93–578. Snap-On Tools Corp. et al. *v.* Vetter et ux. Dist. Ct. Mont., Missoula County. Certiorari denied.

No. 93–582. Bennett *v.* LSP Investment Partnership et al. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 779.

No. 93–584. S. J. T., Inc., dba TJ Smiles, et al. *v.* Richmond County, Georgia, et al. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 267, 430 S. E. 2d 726.

No. 93–588. Kren *v.* City of Springfield, Illinois. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 93–591. Swails *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 276, 431 S. E. 2d 101.

No. 93-593. Davis et al. *v.* City and County of San Francisco et al. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1246.

No. 93-594. Watts *v.* Rice, Secretary of the Army, et al. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 93-596. Bontkowski *v.* First National Bank of Cicero. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 459.

No. 93-597. Welsh, a Minor, et al. *v.* Boy Scouts of America et al. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1267.

No. 93-603. Bewley *v.* Howell, Superintendent, Tulsa County Independent School District No. 1, et al. C. A. 10th Cir. Certiorari denied.

No. 93-604. Statland *v.* American Airlines, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 539.

No. 93-612. Askew et al. *v.* DCH Health Care Authority et al. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 1033.

No. 93-617. Dunn *v.* Sims. Sup. Ct. Ala. Certiorari denied. Reported below: 627 So. 2d 380.

No. 93-619. Graham *v.* Mengel, Clerk, Supreme Court of Ohio, and Secretary of the Board of Bar Examiners, et al. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 1402, 615 N. E. 2d 626.

No. 93-629. St. Hilaire *v.* St. Hilaire. Sup. Jud. Ct. Me. Certiorari denied.

No. 93-634. Washington Mills Electro Minerals Corp. et al. *v.* DeLong Equipment Co. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1186.

No. 93-638. Jordan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 543.

No. 93-654. Relin *v.* Frank. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 1317.

No. 93-663. LAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1540.

No. 93-677. ISQUIERDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1579.

No. 93-703. MEDLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 1244.

No. 93-715. CHMIEL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 416 Pa. Super. 235, 610 A. 2d 1058.

No. 93-721. ROKKE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1157.

No. 93-728. BRECHTEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 1108.

No. 93-749. KELLY ET UX. *v.* OBER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 422 Pa. Super. 641, 613 A. 2d 1268.

No. 93-5019. HAWTHORNE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 4th 43, 841 P. 2d 118.

No. 93-5197. MARTINEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 1408.

No. 93-5351. TURNER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 156 Ill. 2d 354, 620 N. E. 2d 1030.

No. 93-5449. WOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1216.

No. 93-5682. BOOTS *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 315 Ore. 572, 848 P. 2d 76.

No. 93-5692. LUEVANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1543.

No. 93-5739. STOHLER *v.* HARGETT, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 989 F. 2d 508.

No. 93-5814. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 989 F. 2d 1199.

No. 93–5891. DOMINGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 222.

No. 93–5927. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 206.

No. 93–5929. DRAYTON *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied. Reported below: 312 S. C. 4, 430 S. E. 2d 517.

No. 93–5971. MIDDLETON *v.* MURPHY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1219.

No. 93–6062. D'OTTAVIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 992 F. 2d 319.

No. 93–6081. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1222.

No. 93–6093. WILLIAMS *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 226.

No. 93–6137. SANDERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 200.

No. 93–6222. DOWELL *v.* LENSING, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93–6224. STOVALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 93–6243. AGUNBIADE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1533.

No. 93–6247. MCEADDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 656.

No. 93–6266. FLORAT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 231.

No. 93–6281. LEEKS *v.* CUNNINGHAM ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 997 F. 2d 1330.

No. 93–6298. CASTILLO *v.* STAINER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 983 F. 2d 145 and 997 F. 2d 669.

No. 93-6316. RunningEagle *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 59, 859 P. 2d 169.

No. 93-6323. Brooks *v.* American Broadcasting Cos., Inc., et al. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 167.

No. 93-6329. Hegedeos *v.* Dyke College Board of Trustees et al. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 1403, 615 N. E. 2d 627.

No. 93-6334. Wasko *v.* Estelle, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 944 F. 2d 910.

No. 93-6336. Sias *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 93-6338. Tyson *v.* Borg, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 93-6350. Camarena *v.* Superior Court of California, County of Los Angeles, South District. C. A. 9th Cir. Certiorari denied.

No. 93-6353. Crisp *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1210.

No. 93-6355. Ballard *v.* Kaiser, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1249.

No. 93-6362. Epperly *v.* Booker, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 997 F. 2d 1.

No. 93-6364. Hooks *v.* Jenrette, Judge. C. A. 11th Cir. Certiorari denied.

No. 93-6366. Erikson *v.* Rowland et al. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 803.

No. 93-6367. Fleming *v.* District of Columbia et al. C. A. D. C. Cir. Certiorari denied. Reported below: 998 F. 2d 7.

No. 93-6370. Brison *v.* Burton, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–6373. LIMPY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 885.

No. 93–6376. REYES-SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93–6378. MENDEZ *v.* ZINGERS. C. A. 9th Cir. Certiorari denied.

No. 93–6379. MCDONALD *v.* WOODS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 528.

No. 93–6381. VITALE *v.* BROCK ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 998 F. 2d 1001.

No. 93–6382. KIMBLE *v.* HOLMES & NARVER SERVICES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 1063.

No. 93–6383. JOHNSON *v.* METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ET AL. Ct. App. Ga. Certiorari denied. Reported below: 207 Ga. App. 869, 429 S. E. 2d 285.

No. 93–6389. CHILDS *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 67.

No. 93–6402. KEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93–6403. BENTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 996 F. 2d 642.

No. 93–6435. BORTNICK *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 93–6442. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 126.

No. 93–6450. PEEPLES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 155 Ill. 2d 422, 616 N. E. 2d 294.

No. 93–6474. TAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 78.

No. 93–6477. TOWNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1243.

No. 93-6487. Reyes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 990.

No. 93-6494. Dotson et al. *v.* Murphy et al. C. A. 7th Cir. Certiorari denied.

No. 93-6502. Howard *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 440.

No. 93-6515. Brewer *v.* Rocha, Warden. C. A. 9th Cir. Certiorari denied.

No. 93-6533. Opurum *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93-6542. Brown *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 3 F. 3d 673.

No. 93-6546. Foppe *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 1444.

No. 93-6551. Oglesby *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93-6556. McDonald *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93-6558. Augborne *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93-6565. Blair *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93-6566. Washington *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1019.

No. 93-6571. DeVries *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1112.

No. 93-6575. Boswell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1247.

No. 93-6578. Zirpoli *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1542.

No. 93-6579. Simon *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1235.

No. 93-6580. Scott *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1555.

No. 93-6590. Hanoum *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262.

No. 93-6593. Hodges et al. *v.* United States District Court for the Eastern District of Michigan. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 499.

No. 93-6595. Garza *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1098.

No. 93-6596. Jones *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93-6599. Giles *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 33.

No. 93-6602. Doss *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 539.

No. 93-6603. Marx *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 991 F. 2d 1369.

No. 93-6605. Melvin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93-6608. Paulino *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 996 F. 2d 1541.

No. 93-6609. Lester *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1247.

No. 93-6610. Patterson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 865.

No. 93-6611. Mendia *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1248.

No. 93-6612. Nealy *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1580.

No. 93-6613. Lee *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1247.

No. 93-6614. Medved *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93–6617. GREENE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 3 F. 3d 1577.

No. 93–6624. CHANGCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 837.

No. 93–6647. CHICHY ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1501.

No. 93–6648. MENTZER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 404.

No. 93–6651. PENNINGTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 781.

No. 93–6658. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 844.

No. 93–6661. ERDMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1019.

No. 93–6666. JOELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 F. 3d 174.

No. 93–6667. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–6669. CORREA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1491.

No. 93–6671. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 1153.

No. 93–6678. BUNDICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1539.

No. 93–452. SIOUX MANUFACTURING CORP. *v.* ALTHEIMER & GRAY. C. A. 7th Cir. Motion of Glenn A. Hall et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 983 F. 2d 803.

No. 93–583. DICARLO CONSTRUCTION CO. ET AL. *v.* H. H. ROBERTSON CO., CUPPLES PRODUCTS DIVISION. C. A. 8th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 994 F. 2d 476.

No. 93-602. OLIVAREZ, WARDEN *v.* MCKINNEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 993 F. 2d 1378.

No. 93-631. PHILADELPHIA ELECTRIC CO. ET AL. *v.* FISCHER ET AL.; and PHILADELPHIA ELECTRIC CO. ET AL. *v.* KURZ ET AL. C. A. 3d Cir. Motion of Equal Employment Advisory Council for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 994 F. 2d 130 (first case) and 136 (second case).

Rehearing Denied

No. 92-9032. LAWAL *v.* GEORGIA, *ante*, p. 847;

No. 92-9108. PERRYMAN *v.* DEPARTMENT OF LABOR ET AL., *ante*, p. 851;

No. 93-245. RINIER ET AL. *v.* UNITED STATES, *ante*, p. 916;

No. 93-5297. JOHNSON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 886;

No. 93-5354. ZIEBARTH *v.* UNITED STATES, *ante*, p. 933;

No. 93-5549. HANCE *v.* ZANT, WARDEN, *ante*, p. 920;

No. 93-5650. GRAVES *v.* WORLD OMNI FINANCIAL CORP., *ante*, p. 922;

No. 93-5684. STEPHENSON *v.* PENNSYLVANIA, *ante*, p. 923;

No. 93-5741. BIALEN *v.* MANNESMANN DEMAG CORP. ET AL., *ante*, p. 924;

No. 93-5793. WILLIAMS *v.* JENN-AIR CO., *ante*, p. 934;

No. 93-5823. PRUNTY *v.* VOINOVICH, GOVERNOR OF OHIO, *ante*, p. 935;

No. 93-5830. BALL *v.* CARR, *ante*, p. 904;

No. 93-5884. WHITE *v.* TEMPLE UNIVERSITY, *ante*, p. 951;

No. 93-5900. ZARLING ET AL. *v.* UNIVERSAL LIFE CHURCH, *ante*, p. 952; and

No. 93-5938. GOULETTE *v.* HUMPHREY, ATTORNEY GENERAL OF MINNESOTA, *ante*, p. 936. Petitions for rehearing denied.

No. 93-233. CALVENTO *v.* BELLI & SABIH ET AL., *ante*, p. 915. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

DECEMBER 7, 1993

Miscellaneous Order

No. A-471. BURGER *v.* ZANT, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

Statement of JUSTICE BLACKMUN, respecting the denial of stay of execution.

Today the Georgia Supreme Court declined to set aside or to stay Christopher Burger's execution. Because that decision rests on adequate and independent state grounds, it presents this Court with no basis on which to grant relief. I write separately, however, to reiterate my conviction that Mr. Burger was denied the effective assistance of counsel during both the guilt and sentencing phases of his trial. See *Burger* v. *Kemp*, 483 U. S. 776, 796 (1987) (BLACKMUN, J., dissenting). His lawyer's direct conflict of interest prevented him from representing Mr. Burger effectively in plea negotiations and on appeal. Just as egregiously, his counsel inexplicably failed to investigate and to present mitigating evidence—evidence that would have shown that 17-year-old Chris Burger had a diminished mental capacity, functioning at the level of a 12-year-old child, and that the unspeakable physical and psychological abuse he suffered as a child left him a troubled adolescent, with recurring psychological problems. These shortcomings by counsel, which were never remedied, leave me convinced that Mr. Burger's conviction, sentencing proceeding, and appeal cannot "be relied on as having produced a just result." *Strickland* v. *Washington*, 466 U. S. 668, 686 (1984).

DECEMBER 10, 1993

Dismissal Under Rule 46

No. 93–643. BESSEMER & LAKE ERIE RAILROAD *v.* REPUBLIC STEEL CORP. ET AL. C. A. 3d Cir. Certiorari dismissed as to Republic Steel Corp. and Jones & Laughlin Steel Corp. under this Court's Rule 46.1. Reported below: 998 F. 2d 1144.

DECEMBER 13, 1993

Miscellaneous Orders. (See also No. 109, Orig., *ante*, p. 126.)

No. ———. MILFORD ET AL. *v.* NISSAN MOTOR CORPORATION IN U. S. A. ET AL.; and

No. ———. FOSTER *v.* RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1335. IN RE DISBARMENT OF KRISTOFF. It is ordered that Lawrence E. Kristoff, of White Plains, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1336. In re Disbarment of Price. It is ordered that Wayne Jeffrey Price, of Brooklyn, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1337. In re Disbarment of Agrillo. It is ordered that Leo J. Agrillo, of Brooklyn, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 111, Orig. Delaware et al. *v.* New York. Pursuant to the order entered October 4, 1993 [*ante*, p. 805], motion of New York for leave to file a counterclaim referred to the Special Master. [For earlier order herein, see, *e. g.*, *ante*, p. 805.]

No. 92–8556. Nichols *v.* United States. C. A. 6th Cir. [Certiorari granted, 509 U. S. 953.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 92–8894. Victor *v.* Nebraska. Sup. Ct. Neb. [Certiorari granted, 509 U. S. 954]; and

No. 92–9049. Sandoval *v.* California. Sup. Ct. Cal. [Certiorari granted, 509 U. S. 954.] Motion of petitioners for divided argument granted. Motions of Criminal Justice Legal Foundation and California District Attorney's Association for leave to file briefs as *amici curiae* granted.

No. 93–180. Boca Grande Club, Inc. *v.* Florida Power & Light Co., Inc. C. A. 11th Cir. [Certiorari granted, 509 U. S. 953.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–289. Dalton, Secretary of the Navy, et al. *v.* Specter et al. C. A. 3d Cir. [Certiorari granted, *ante*, p. 930.] Motion of Business Executives for National Security for leave to file a brief as *amicus curiae* granted.

No. 93–643. BESSEMER & LAKE ERIE RAILROAD CO. *v.* WHEELING-PITTSBURGH STEEL CORP. ET AL. C. A. 3d Cir. Motions of Association of American Railroads and Business Roundtable for leave to file briefs as *amici curiae* granted. The parties are directed to file responses addressing the impact of the settlement on the questions presented by the petition for writ of certiorari within 30 days.

No. 93–6130. IN RE JONES. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 963] denied. Motion of petitioner for leave to amend the petition for writ of mandamus and/or prohibition denied.

No. 93–6255. STEINES ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 7th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 962] denied.

No. 93–6498. IN RE ANDERSON; and

No. 93–6780. IN RE MILLER. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until January 3, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–6437. IN RE IVEY. Petition for writ of mandamus denied.

Certiorari Granted

No. 93–376. KEY TRONIC CORP. *v.* UNITED STATES ET AL.; and STANTON ROAD ASSOCIATES *v.* LOHREY ENTERPRISES, INC., ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 984 F. 2d 1025 (first case) and 1015 (second case).

Certiorari Denied

No. 93–438. NATIONAL ASSOCIATION OF RADIATION SURVIVORS ET AL. *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 583.

No. 93–442. FARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 451.

No. 93–454. Louisiana-Pacific Corp. *v.* Baker. Sup. Ct. Idaho. Certiorari denied. Reported below: 123 Idaho 799, 853 P. 2d 544.

No. 93–457. Miller *v.* Securities and Exchange Commission. C. A. 2d Cir. Certiorari denied. Reported below: 998 F. 2d 62.

No. 93–466. Sterling Suffolk Racecourse Limited Partnership *v.* Burrillville Racing Assn., Inc. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 1266.

No. 93–498. Town of Nahant, Massachusetts *v.* O'Connor. C. A. 1st Cir. Certiorari denied. Reported below: 994 F. 2d 905.

No. 93–621. Lehigh Valley Hospital Center, Inc., et al. *v.* Boyer et al. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1488.

No. 93–623. Valley Forge Insurance Co. *v.* Strickland, Individually and as Mother and Next Friend of Strickland. Sup. Ct. Miss. Certiorari denied. Reported below: 620 So. 2d 535.

No. 93–626. Gonzales *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–627. Meunier et al. *v.* Minnesota Department of Revenue et al. Sup. Ct. Minn. Certiorari denied. Reported below: 503 N. W. 2d 125.

No. 93–628. Mineer *v.* Fleming County, Kentucky, et al. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1547.

No. 93–641. Fleming *v.* Borden, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1210.

No. 93–645. Needler et al. *v.* Olson et al. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 562.

No. 93–646. Donahey *v.* Livingstone et al. C. A. 6th Cir. Certiorari denied. Reported below: 987 F. 2d 1250.

No. 93–648. County of Murray, Georgia, et al. *v.* Vineyard. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1207.

No. 93–665. Jabe, Warden, et al. *v.* Bunker. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1066.

No. 93–725. Cheramie et al. *v.* Exxon Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 304.

No. 93–738. Oberle, aka Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–746. Conference of African Union First Colored Methodist Protestant Church et al. *v.* Mother African Union First Colored Methodist Protestant Church et al. Sup. Ct. Del. Certiorari denied. Reported below: 633 A. 2d 369.

No. 93–748. Zarick *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 227 Conn. 207, 630 A. 2d 565.

No. 93–802. Wotnoske *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 177 Wis. 2d 621, 503 N. W. 2d 22.

No. 93–5290. Blair *v.* Cinnamond et al. C. A. 9th Cir. Certiorari denied.

No. 93–5760. Crespo *v.* United States Postal Service. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 319.

No. 93–5768. Pemberton *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 1218.

No. 93–5836. Alexander *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 314.

No. 93–5838. Gonzalez-Lopez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 981 F. 2d 1263.

No. 93–5839. Hawkins *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 221.

No. 93–5963. Sochor *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 619 So. 2d 285.

No. 93–5964. Trice *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 853 P. 2d 203.

No. 93-6049. SANDERLIN ET VIR *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 1235.

No. 93-6066. PARRA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1058.

No. 93-6123. CLARKE *v.* UNIVERSITY OF NORTH TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1544.

No. 93-6217. BLACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1021.

No. 93-6270. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93-6294. SOLOMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 587.

No. 93-6297. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 534.

No. 93-6326. HETHERINGTON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93-6384. BEN-AVRAHAM *v.* MOSES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 1246.

No. 93-6393. SCHURZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 46, 859 P. 2d 156.

No. 93-6409. FRANKLIN *v.* ADKINS, ASSISTANT SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1549.

No. 93-6410. HECTOR *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 307.

No. 93-6411. YOUNG *v.* GRIFO. C. A. 3d Cir. Certiorari denied.

No. 93-6413. THOMAS *v.* EVANS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93–6414. Williams *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 93–6415. Williams *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 93–6426. Ibanez *v.* Territory of Guam. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 884.

No. 93–6432. Simmons *v.* Robinson et al. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1150.

No. 93–6433. Reel *v.* Vaughn, Superintendent, State Correctional Institution, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1490.

No. 93–6434. Williams *v.* Wilson et al. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 995.

No. 93–6443. Gonzalez *v.* Walker, Superintendent, Auburn Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 220.

No. 93–6445. Flanders *v.* Hurt, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1231.

No. 93–6454. Duenas *v.* Singletary, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 624 So. 2d 265.

No. 93–6455. Caldwell *v.* Ivers. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–6459. Holloway *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 93–6471. Eline *v.* Hawaii. Sup. Ct. Haw. Certiorari denied.

No. 93–6472. Jones *v.* Edgar, Governor of Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 1016.

No. 93–6473. Jones *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 442 Mich. 893, 499 N. W. 2d 344.

No. 93–6478. WALKER *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 4th Cir. Certiorari denied. Reported below: 989 F. 2d 495.

No. 93–6480. TALON *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 999 F. 2d 514.

No. 93–6491. MASONER *v.* THURMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1003.

No. 93–6493. BERGMANN *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 93–6506. JENNINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 333 N. C. 579, 430 S. E. 2d 188.

No. 93–6520. GORDON *v.* FRANK, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–6528. MEYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 995.

No. 93–6532. MCCRIMMON *v.* SUMNER, DIRECTOR OF NEVADA PRISONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 882.

No. 93–6540. JOHNAKIN *v.* VAUGHN, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–6544. MCALEESE *v.* MAZURKIEWICZ, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 1 F. 3d 159.

No. 93–6548. HARRISON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 539.

No. 93–6557. LAGER *v.* JONES. C. A. 8th Cir. Certiorari denied.

No. 93–6592. GHAZIBAYAT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 184 App. Div. 2d 618, 584 N. Y. S. 2d 901.

No. 93-6601. Aguirre *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 1454.

No. 93-6622. Crumb *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93-6632. Rochette *v.* Meachum, Commissioner, Connecticut Department of Correction, et al. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 221.

No. 93-6641. Morris *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1006.

No. 93-6646. Donaldson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1242.

No. 93-6654. Gonzales *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1544.

No. 93-6657. Williams *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93-6675. Benny *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 93-6680. Logan *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93-6681. Moore *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 30.

No. 93-6685. Gonzalez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1583.

No. 93-6692. Mathews *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 997 F. 2d 848.

No. 93-6693. Sanchez Caicedo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 306.

No. 93-6696. Nicol *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1159.

No. 93-6699. Rodriguez *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 995 F. 2d 776.

No. 93-6700. Ellzey *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1161.

No. 93–6702. Donaldson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93–6705. Richmond *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1235.

No. 93–6708. Silva *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 234.

No. 93–6709. Calderon *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93–6710. Rhaburn *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1159.

No. 93–6711. Lowery *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 405.

No. 93–6715. Jackson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 623 A. 2d 571.

No. 93–6716. Encarnacion, aka Graham *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93–6734. Farley et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 645.

No. 93–6810. Santori *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 178 Wis. 2d 317, 504 N. W. 2d 875.

No. 93–412. Dale *v.* United States. C. A. D. C. Cir. Certiorari denied. Justice Ginsburg took no part in the consideration or decision of this petition. Reported below: 991 F. 2d 819.

No. 93–461. Alabama *v.* Smith. Ct. Crim. App. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 623 So. 2d 369.

No. 93–633. Agency for Health Care Administration, as Successor in Interest to Secretary, Florida Department of Health and Rehabilitative Services *v.* Pittman, by His Next Friend, Pope. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 998 F. 2d 887.

No. 93–637. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* CUMBIE. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* without an affidavit of indigency granted. Certiorari denied. Reported below: 991 F. 2d 715.

No. 93–658. OWENS-CORNING FIBERGLAS CORP. *v.* DUNN. C. A. 3d Cir. Motion of Center for Claims Resolution for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 1 F. 3d 1371.

Rehearing Denied

No. 93–193. NEW JERSEY CARPENTERS WELFARE FUND ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL.; and

No. 93–194. UNITED WIRE, METAL & MACHINE HEALTH AND WELFARE FUND ET AL. *v.* MORRISTOWN MEMORIAL HOSPITAL ET AL., *ante,* p. 944. Petition for rehearing denied.

DECEMBER 14, 1993

Certiorari Denied

No. 93–7085 (A–492). PHILLIPS, AKA BASHIR *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 12 F. 3d 1097.

No. 93–7088 (A–493). PHILLIPS, AKA BASHIR *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE GINSBURG would grant the application for stay of execution.

DECEMBER 16, 1993

Dismissal Under Rule 46

No. 93–376. KEY TRONIC CORP. *v.* UNITED STATES ET AL.; and STANTON ROAD ASSOCIATES *v.* LOHREY ENTERPRISES, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1023.] Writ of certiorari dismissed as to *Stanton Road Associates* v. *Lohrey Enterprises, Inc., et al.* under this Court's Rule 46.1.

Rehearing Denied

No. 93–6401 (A–488). PRUETT *v.* THOMPSON, WARDEN, *ante*, p. 984. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for rehearing denied.

DECEMBER 17, 1993

Dismissal Under Rule 46

No. 93–643. BESSEMER & LAKE ERIE RAILROAD CO. *v.* WHEELING-PITTSBURGH STEEL CORP. ET AL. C. A. 3d Cir. Certiorari dismissed as to Erie-Western Pennsylvania Port Authority, Codan Corp., and C. D. Ambrosia Trucking Co. under this Court's Rule 46.1. Reported below: 998 F. 2d 1144.

DECEMBER 18, 1993

Miscellaneous Order

No. A–502. BABY BOY DOE, A FETUS, BY HIS COURT-APPOINTED GUARDIAN AD LITEM, MURPHY, COOK COUNTY PUBLIC GUARDIAN *v.* MOTHER DOE. Application for an order remanding the matter to the Circuit Court of Cook County, presented to JUSTICE STEVENS, and by him referred to the Court, denied. JUSTICE BLACKMUN would grant the application.

DECEMBER 22, 1993

Dismissal Under Rule 46

No. 93–761. SHANGRI-LA DEVELOPMENT CO. *v.* NATIONAL HOME INSURANCE CO. ET AL. Ct. App. Mo., Eastern Dist. Certiorari dismissed under this Court's Rule 46.1. Reported below: 857 S. W. 2d 460.

JANUARY 5, 1994

Dismissals Under Rule 46

No. 92–1012. SIMPSON PAPER (VERMONT) CO. *v.* DEPARTMENT OF ENVIRONMENTAL CONSERVATION ET AL. Sup. Ct. Vt. Certiorari dismissed under this Court's Rule 46. Reported below: 159 Vt. 639, 628 A. 2d 944.

No. 93–899. POOLE ET AL. *v.* CITY OF KILLEEN ET AL. C. A. 5th Cir. Certiorari dismissed as to Lorraine Poole under this Court's Rule 46. Reported below: 999 F. 2d 1580.

JANUARY 6, 1994

Miscellaneous Order

No. A–549. WELLS, BY AND THROUGH KEHNE *v.* ARAVE, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. JUSTICE GINSBURG would grant the motion to proceed *in forma pauperis* without an affidavit of indigency. Having considered the lodged petition for writ of certiorari filed by an alleged next friend, she would deny it, and therefore votes to deny the attendant application for stay of execution. JUSTICE BLACKMUN and JUSTICE STEVENS would grant the application for stay of execution.

JANUARY 10, 1994

Dismissals Under Rule 46

No. 93–809. PEAK COMPUTER, INC., ET AL. *v.* MAI SYSTEMS CORP. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 991 F. 2d 511.

No. 93–810. SEARLE *v.* MORGAN. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 997 F. 2d 1244.

Certiorari Granted—Reversed and Remanded. (See No. 92–8836, *ante*, p. 132.)

Certiorari Granted—Vacated and Remanded

No. 93–281. FONTROY *v.* OWENS ET AL. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Helling* v. *McKinney*, 509 U. S. 25 (1993). Reported below: 989 F. 2d 486.

Miscellaneous Orders

No. ———. BABY BOY DOE, A FETUS, BY HIS COURT-APPOINTED GUARDIAN AD LITEM, MURPHY, COOK COUNTY PUB-

LIC GUARDIAN *v.* MOTHER DOE. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. ——–—. MERIDA *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. ——–—. WELLS, BY AND THROUGH KEHNE *v.* ARAVE, WARDEN. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied. JUSTICE SOUTER and JUSTICE GINSBURG would grant the motion for leave to proceed *in forma pauperis.*

No. A–453. BARTH *v.* ZIMMER. Super. Ct. N. J., Somerset County, Law Div. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. A–505. INTERCONTINENTAL BULKTANK CORP. *v.* JORDAN. Ct. App. La., 1st Cir. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. D–1309. IN RE DISBARMENT OF SHANK. Disbarment entered. [For earlier order herein, see 509 U. S. 950.]

No. D–1316. IN RE DISBARMENT OF BAITY. Disbarment entered. [For earlier order herein, see *ante,* p. 929.]

No. D–1318. IN RE DISBARMENT OF ANNIN. Disbarment entered. [For earlier order herein, see *ante,* p. 940.]

No. D–1320. IN RE DISBARMENT OF DE LOACH. Disbarment entered. [For earlier order herein, see *ante,* p. 941.]

No. D–1321. IN RE DISBARMENT OF WERNER. Disbarment entered. [For earlier order herein, see *ante,* p. 941.]

No. D–1324. IN RE DISBARMENT OF RIOS. Disbarment entered. [For earlier order herein, see *ante,* p. 961.]

No. D–1330. IN RE DISBARMENT OF BUTLER. Disbarment entered. [For earlier order herein, see *ante,* p. 974.]

No. D–1338. IN RE DISBARMENT OF SACKS. It is ordered that Carl Jay Sacks, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1339. In re Disbarment of Reef. It is ordered that Norman S. Reef, of Portland, Me., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1340. In re Disbarment of Kennedy. It is ordered that Beverly B. Kennedy, of Manchester, N. H., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1341. In re Disbarment of Cullen. It is ordered that Jerry Michael Cullen, of Kansas City, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1342. In re Disbarment of Kole. It is ordered that Bernard Patrick Kole, of Havre de Grace, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1343. In re Disbarment of Koprowski. It is ordered that Joseph Andrew Koprowski, of Kingwood, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1344. In re Disbarment of Johnson. It is ordered that David Lee Johnson, of Decatur, Ill., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1345. In re Disbarment of Krohn. It is ordered that Barry Krohn, of Coral Springs, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1346. In re Disbarment of Arditti. It is ordered that Victor R. Arditti, of El Paso, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1347. In re Disbarment of Conaway. It is ordered that Charles T. Conaway, of San Antonio, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1348. In re Disbarment of Bailey. It is ordered that Joel Lynn Bailey, of Garland, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1349. In re Disbarment of Cooper. It is ordered that Garry Michael Cooper, of Houston, Tex., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1350. In re Disbarment of Lilly. It is ordered that David Greene Lilly, of Los Angeles, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1351. In re Disbarment of Venable. It is ordered that William H. C. Venable, of Richmond, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 121, Orig. Louisiana *v.* Mississippi et al. Motion of Mississippi for leave to file a counterclaim granted. Plaintiff allowed 30 days within which to file an answer. [For earlier order herein, see, *e. g., ante,* p. 941.]

No. 92–780. National Organization for Women, Inc., et al. *v.* Scheidler et al. C. A. 7th Cir. [Certiorari granted, 508 U. S. 971.] Motion of respondents Randall A. Terry et al. for leave to file a supplemental brief after argument denied.

No. 92–1384. Barclays Bank PLC *v.* Franchise Tax Board of California; and

No. 92–1839. Colgate-Palmolive Co. *v.* Franchise Tax Board of California. Ct. App. Cal., 3d App. Dist. [Certiorari granted, *ante*, p. 942.] Motion of petitioners for divided argument granted.

No. 92–1856. City of Ladue et al. *v.* Gilleo. C. A. 8th Cir. [Certiorari granted, *ante*, p. 809.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92–1911. PUD No. 1 of Jefferson County et al. *v.* Washington Department of Ecology et al. Sup. Ct. Wash. [Certiorari granted, *ante*, p. 810.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92–8841. Powell *v.* Nevada. Sup. Ct. Nev. [Certiorari granted, *ante*, p. 811.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–284. Security Services, Inc. *v.* Kmart Corp. C. A. 3d Cir. [Certiorari granted, *ante*, p. 930.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92–1941. United States *v.* Carlton. C. A. 9th Cir. [Certiorari granted, *ante*, p. 810.] Motions of Anthony C. Morici, The American Cause, and Washington Legal Foundation et al. for leave to file briefs as *amici curiae* granted.

No. 92–1964. National Labor Relations Board *v.* Health Care & Retirement Corporation of America. C. A. 6th Cir. [Certiorari granted, *ante*, p. 810.] Motion of U. S. Home Care Corporation of Hartsdale, New York, for leave to file a brief as *amicus curiae* granted.

No. 92–1988. Ticor Title Insurance Co. et al. *v.* Brown et al. C. A. 9th Cir. [Certiorari granted, *ante*, p. 810.] Motion of Leslie O'Neal et al. for leave to file a brief as *amici curiae* granted. Motion of Leslie O'Neal et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 93–289. DALTON, SECRETARY OF THE NAVY, ET AL. *v.* SPECTER ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 930.] Motion of respondents for divided argument denied.

No. 93–405. DIGITAL EQUIPMENT CORP. *v.* DESKTOP DIRECT, INC. C. A. 10th Cir. [Certiorari granted, *ante*, p. 942.] Motion of petitioner for leave to file one volume of the joint appendix under seal granted.

No. 93–5131. TUILAEPA *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1010.] Motion for appointment of counsel granted, and it is ordered that Howard Gillingham, Esq., of North Hollywood, Cal., be appointed to serve as counsel for petitioner in this case.

No. 93–5161. PROCTOR *v.* CALIFORNIA. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1010.] Motion for appointment of counsel granted, and it is ordered that Wendy C. Lascher, Esq., of Ventura, Cal., be appointed to serve as counsel for petitioner in this case.

No. 93–5209. CUSTIS *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 913.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 93–6499. JOHL *v.* PETERS, CHIEF JUSTICE, SUPREME COURT OF CONNECTICUT, ET AL. C. A. 2d Cir.; and

No. 93–6919. IN RE ANDERSON. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until January 31, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–6537. LAWRENCE *v.* UNITED STATES ET AL. C. A. 7th Cir.;

No. 93–6619. EISENSTEIN *v.* HABER ET AL. C. A. 2d Cir.; and

No. 93–6823. PRYOR *v.* UNITED STATES. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 31, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–7074. BEACHEM *v.* VIRGINIA. C. A. 4th Cir. Motion of petitioner to consolidate this petition with No. 93–5418, *Reed* v. *Farley, Superintendent, Indiana State Prison, et al.* [certiorari granted, *ante,* p. 963], denied.

No. 93–6973. IN RE SHAVER. Petition for writ of habeas corpus denied.

No. 93–730. IN RE PRISON INDUSTRY AUTHORITY ET AL.;
No. 93–5458. IN RE KRUSE;
No. 93–6251. IN RE ZACK;
No. 93–6252. IN RE LAWRENCE;
No. 93–6510. IN RE HABINIAK; and
No. 93–6948. IN RE MERIT. Petitions for writs of mandamus denied.

No. 93–6492. IN RE CORETHERS; and
No. 93–6500. IN RE GREEN. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–120. THOMAS JEFFERSON UNIVERSITY, DBA THOMAS JEFFERSON UNIVERSITY HOSPITAL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari granted. Reported below: 993 F. 2d 879.

No. 93–609. MORGAN STANLEY & CO. INC. ET AL. *v.* PACIFIC MUTUAL LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari granted. Reported below: 997 F. 2d 39.

No. 93–714. U. S. BANCORP MORTGAGE CO. *v.* BONNER MALL PARTNERSHIP. C. A. 9th Cir. Certiorari granted. Reported below: 2 F. 3d 899.

No. 93–670. HOWLETT *v.* BIRKDALE SHIPPING CO., S. A. C. A. 3d Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 998 F. 2d 1003.

No. 93–5256. WILLIAMSON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 981 F. 2d 1262.

Certiorari Denied

No. 92–1398. RICHARDSON, CHAPTER 7 PANEL TRUSTEE *v.* MT. ADAMS FURNITURE. C. A. 9th Cir. Certiorari denied. Reported below: 980 F. 2d 590.

No. 92-7971. LOCKETT *v.* MISSISSIPPI (two cases). Sup. Ct. Miss. Certiorari denied. Reported below: 614 So. 2d 888 (first case) and 898 (second case).

No. 92-8183. COOK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 65 Ohio St. 3d 516, 605 N. E. 2d 70.

No. 92-9000. CHRISTOFFEL *v.* BENZENHOEFER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1256.

No. 92-9070. PAYTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 4th 1050, 839 P. 2d 1035.

No. 93-19. TENNESSEE *v.* BANE; and TENNESSEE *v.* SMITH. Sup. Ct. Tenn. Certiorari denied. Reported below: 853 S. W. 2d 483 (first case); 857 S. W. 2d 1 (second case).

No. 93-51. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 985 F. 2d 1248.

No. 93-320. KEOUGH, ACTING REGIONAL ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, REGION I *v.* AMERICAN POLICYHOLDERS INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 1256.

No. 93-370. DEBRAINE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 982 F. 2d 1365 and 992 F. 2d 1015.

No. 93-380. PRICE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 962 F. 2d 836.

No. 93-389. SWINDALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 971 F. 2d 1531.

No. 93-390. YOUGHIOGHENY & OHIO COAL CO. *v.* MCANGUES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 130.

No. 93-418. SOUTHERN TIMBER PURCHASERS COUNCIL ET AL. *v.* MEIER, ACTING REGIONAL FORESTER, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 800.

No. 93-439. SALZMANN *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 119 Ore. App. 217, 850 P. 2d 1122.

No. 93–444. City of Palo Alto et al. *v.* O'Leary, Secretary of Energy, et al. C. A. 9th Cir. Certiorari denied. Reported below: 984 F. 2d 1008.

No. 93–450. Coones *v.* Federal Deposit Insurance Corporation. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 250.

No. 93–542. Rashmi P. *v.* Commissioner of Social Services of New York City. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 2d 981, 587 N. Y. S. 2d 410.

No. 93–543. Goldstein & Baron, Chartered *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 995 F. 2d 35.

No. 93–548. Kelly, Trustee *v.* Tahoe Regional Planning Agency et al. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 638, 855 P. 2d 1027.

No. 93–558. Religious Technology Center et al. *v.* United States District Court for the Central District of California (Mayo et al., Real Parties in Interest). C. A. 9th Cir. Certiorari denied.

No. 93–560. Public Citizen et al. *v.* United States Trade Representative. C. A. D. C. Cir. Certiorari denied. Reported below: 5 F. 3d 549.

No. 93–567. Continental Illinois Corp. *v.* Commissioner of Internal Revenue. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 513.

No. 93–580. Lewis *v.* Ohio. Ct. App. Ohio, Allen County. Certiorari denied. Reported below: 85 Ohio App. 3d 29, 619 N. E. 2d 57.

No. 93–587. Scarce *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 397.

No. 93–592. Dow Chemical Co. *v.* Asociacion Nacional de Pescadores a Pequena Escala o Artesanales de Colombia et al. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 559.

No. 93-595. POINTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93-605. ESTATE OF SMITH, BY AND THROUGH ITS PERSONAL REPRESENTATIVE, JORDAN, ET AL. *v.* CITY OF HOLLYWOOD ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 615 So. 2d 204.

No. 93-606. KRUG *v.* VALLEY FIDELITY BANK & TRUST CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 540.

No. 93-614. JONES *v.* WILSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 304.

No. 93-640. STUMPF *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 196 Mich. App. 218, 492 N. W. 2d 795.

No. 93-642. FISHER *v.* RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 216.

No. 93-650. HOLLAND ET UX. *v.* JOHN DEERE CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 547.

No. 93-652. BLAKEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 1084.

No. 93-653. EVERETT ET AL. *v.* AMERICAN CENTRAL GAS COS., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 223.

No. 93-656. GAS UTILITIES COMPANY OF ALABAMA, INC. *v.* SOUTHERN NATURAL GAS CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 282.

No. 93-660. HIRSH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 428 Pa. Super. 637, 627 A. 2d 202.

No. 93-661. WHITE CONSOLIDATED INDUSTRIES, INC. *v.* PENSION BENEFIT GUARANTY CORPORATION; and WHITE CONSOLIDATED INDUSTRIES, INC., ET AL. *v.* BLAW KNOX RETIREMENT

INCOME PLAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1192 (first case) and 1185 (second case).

No. 93–668. HANOVER SOCIETY FOR THE DEAF, INC. *v.* BOARD OF SUPERVISORS OF HANOVER COUNTY, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 93–669. F. J. VOLLMER & CO. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 1511.

No. 93–672. THOMAS *v.* PEARL. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 447.

No. 93–674. PALKOVICH *v.* UNITED STATES POSTAL SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1021.

No. 93–675. KELLEY, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, KELLEY ET AL. *v.* INDUSTRIAL REFRIGERATED SYSTEMS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 992 F. 2d 1408.

No. 93–679. STASSIS *v.* HARTMAN ET AL., MINORS, BY THEIR NEXT FRIEND, HARTMAN. Ct. App. Iowa. Certiorari denied. Reported below: 504 N. W. 2d 129.

No. 93–684. ATLANTIC HEALTHCARE BENEFITS TRUST ET AL. *v.* FOSTER, INSURANCE COMMISSIONER OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 778.

No. 93–685. ATLANTIC HEALTHCARE BENEFITS TRUST ET AL. *v.* GOOGINS, COMMISSIONER OF INSURANCE OF CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 1.

No. 93–686. WILLIAMS ET VIR, ON BEHALF OF THEIR MINOR SON, WILLIAMS *v.* SCHOOL DISTRICT OF BETHLEHEM, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 168.

No. 93–688. HUISINGA *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 242 Ill. App. 3d 418, 610 N. E. 2d 168.

No. 93–689. QUINN *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1249.

No. 93–690. PICKENS ET AL. *v.* LOCKHEED CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1488.

No. 93–692. LINDQUIST *v.* GOLDSCHNEIDER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93–694. PISCIOTTA ET UX. *v.* SMITH BARNEY SHEARSON. Ct. App. D. C. Certiorari denied. Reported below: 629 A. 2d 520.

No. 93–698. ADAMS *v.* FEDERAL AVIATION ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 955.

No. 93–699. KREISNER *v.* CITY OF SAN DIEGO. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 775.

No. 93–702. VILLAR, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF VILLAR, DECEASED, ET AL. *v.* CROWLEY MARITIME CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 1489.

No. 93–709. G. I. TRUCKING CO. *v.* INSURANCE COMPANY OF NORTH AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 903.

No. 93–710. TALLEY *v.* FLATHEAD VALLEY COMMUNITY COLLEGE ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 259 Mont. 479, 857 P. 2d 701.

No. 93–711. DELUCA, AN INFANT, BY HER GUARDIAN AD LITEM, DELUCA, ET AL. *v.* MERRELL DOW PHARMACEUTICALS, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 778.

No. 93–718. OLON ET UX. *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 534 Pa. 90, 626 A. 2d 533.

No. 93–722. DETREX CORP. *v.* AMCAST INDUSTRIAL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 746.

No. 93–724. KELLY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. *v.* LASHAWN A., BY HER NEXT FRIEND, MOORE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1319.

No. 93–726. GHOBASHY *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 82 N. Y. 2d 701, 619 N. E. 2d 653.

No. 93–727. CALIFORNIA *v.* ABOGADO LUCERO ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–729. GALLAGHER ET AL. *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 93–731. HALL *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 313 Ark. xxiii.

No. 93–732. WHETSTONE *v.* WHETSTONE ET AL. Ct. App. S. C. Certiorari denied.

No. 93–734. MILLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 120.

No. 93–739. MOULTON *v.* CORY. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93–740. SHU YAN ENG, AKA AH SHU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 997 F. 2d 987.

No. 93–741. KOSTRUBALA *v.* ESTATE OF CONNERS, BY HER ADMINISTRATOR, MEREDITH, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 26.

No. 93–742. STEGE ET AL. *v.* GIRARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 548.

No. 93–747. MOHS *v.* CENTURY 21 REAL ESTATE CORP. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1550.

No. 93–751. MURRAY *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 855 P. 2d 350.

No. 93–752. MITCHELL *v.* ALBUQUERQUE BOARD OF EDUCATION, DBA ALBUQUERQUE PUBLIC SCHOOLS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1160.

No. 93–755. KUHL ET AL. *v.* LINCOLN NATIONAL HEALTH PLAN OF KANSAS CITY, INC. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 298.

No. 93–757. CLAUSEN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–758. RITTER ET AL. *v.* ROSS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 992 F. 2d 750.

No. 93–760. BORJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–763. MCKETHAN *v.* TEXAS FARM BUREAU ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 734.

No. 93–765. BELIZE TRADING, LTD., ET AL. *v.* EL PIRATA DEL CARIBE, S. A., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 790.

No. 93–766. RYTMAN ET AL. *v.* KOFKOFF EGG FARM LIMITED PARTNERSHIP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93–770. EDENSO *v.* HAIDA CORP. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1156.

No. 93–773. PRICE ET AL. *v.* FCC NATIONAL BANK. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 472.

No. 93–774. GREEN *v.* PRIMERICA DISABILITY INCOME PLAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 880.

No. 93–775. GEORGE, AKA PROCHAZKA *v.* ZLOTOFF ET UX. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–776. ADOLPH *v.* LEHMAN BROTHERS KUHN LOEB, INC. C. A. 9th Cir. Certiorari denied.

No. 93–777. CHAPDELAINE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 989 F. 2d 28.

No. 93–781. SINKFIELD ET AL. *v.* WESCH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 6 F. 3d 1465.

No. 93–787. CLEVELAND SURGI-CENTER, INC., ET AL. *v.* JONES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 686.

No. 93-788. FARRAR ET UX. *v.* FRANCHISE TAX BOARD. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 15 Cal. App. 4th 10, 18 Cal. Rptr. 2d 611.

No. 93-789. MENDEZ-VILLARREAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93-798. BUCHBINDER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 542.

No. 93-801. LERCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 158.

No. 93-811. POLLEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93-814. HUSMAN *v.* CLIMAX MOLYBDENUM CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93-815. HARRIS *v.* SKI PARK FARMS, INC. Sup. Ct. Wash. Certiorari denied. Reported below: 120 Wash. 2d 727, 844 P. 2d 1006.

No. 93-821. MURPHY *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 468.

No. 93-838. PERREAULT *v.* FISHMAN, MARITAL MASTER, SUPERIOR COURT OF NEW HAMPSHIRE, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 998 F. 2d 1001.

No. 93-846. BROOKMAN *v.* BENTSEN, SECRETARY OF THE TREASURY. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 996.

No. 93-864. LOMBARDI ET AL. *v.* HALL. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 954.

No. 93-866. SHOEMAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 53.

No. 93-869. MUHAMMAD *v.* MUHAMMAD. Sup. Ct. Miss. Certiorari denied. Reported below: 622 So. 2d 1239.

No. 93-905. STRASBURG ET AL. *v.* STATE BAR OF WISCONSIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 468.

No. 93-5407. CAMPBELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 988 F. 2d 544.

No. 93-5547. HENRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 613 So. 2d 429.

No. 93-5551. MARTINEZ-HIDALGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 993 F. 2d 1052.

No. 93-5859. PEAK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 773.

No. 93-5904. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 990 F. 2d 1047.

No. 93-5916. JAMES *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 93-5956. UFFELMAN *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 626 A. 2d 340.

No. 93-5983. VOYLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 91.

No. 93-5992. ROBERTS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 998 F. 2d 7.

No. 93-6021. HAILEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. 210, 429 S. E. 2d 917.

No. 93-6040. HITTLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-6060. THOMPSON *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 318.

No. 93-6065. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 626.

No. 93-6085. MCGEE *v.* UNITED STATES;
No. 93-6392. EDWARDS *v.* UNITED STATES; and
No. 93-6539. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 417.

No. 93-6095. HATLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93-6122. STEEN *v.* UNITED STATES POSTAL SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93-6128. BARAKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 1107.

No. 93-6138. LOCKWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93-6145. CROUSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 229.

No. 93-6149. KEAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1241.

No. 93-6181. MACK *v.* DEPARTMENT OF VETERANS AFFAIRS ET AL. C. A. 2d Cir. Certiorari denied.

No. 93-6193. HAUSE *v.* VAUGHT, DIRECTOR, HORRY COUNTY DETENTION CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1079.

No. 93-6198. SIMS ET VIR *v.* SUBWAY EQUIPMENT LEASING CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 994 F. 2d 210.

No. 93-6213. STANFORD *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 854 S. W. 2d 742.

No. 93-6221. JERMYN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 533 Pa. 194, 620 A. 2d 1128.

No. 93-6249. BONACE *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1488.

No. 93-6255. STEINES ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1550.

No. 93-6267. KALAKAY *v.* NEWBLATT, JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1219.

No. 93–6306. PYLES *v.* RUNYON, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1538.

No. 93–6325. GUTIERREZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93–6337. STEWART *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1236.

No. 93–6345. ARCENEAUX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1491.

No. 93–6354. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 997 F. 2d 407.

No. 93–6360. FORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 83.

No. 93–6371. CLEMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 154.

No. 93–6374. MIMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 541.

No. 93–6391. SPENCER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 176 Ariz. 36, 859 P. 2d 146.

No. 93–6421. OROPALLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 994 F. 2d 25.

No. 93–6423. MILLER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 133.

No. 93–6476. TILLMAN *v.* COOK, WARDEN. Sup. Ct. Utah. Certiorari denied. Reported below: 855 P. 2d 211.

No. 93–6479. WINSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 607.

No. 93–6481. WHITAKER *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–6482. TRAYLOR *v.* LETTS. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 994.

No. 93–6501. FRENCH *v.* BEARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 160.

No. 93–6503. GRAY *v.* GARNER, SHERIFF, OUACHITA COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 608.

No. 93–6507. GIBSON *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 26.

No. 93–6509. JOHNSON *v.* CITY OF CHEYENNE, WYOMING, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 546.

No. 93–6511. HAMMOND *v.* WEEKES. Ct. App. D. C. Certiorari denied. Reported below: 621 A. 2d 838.

No. 93–6512. GRAHAM *v.* SAUNDERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1149.

No. 93–6513. SHABAZZ *v.* BEYER, SUPERINTENDENT, TRENTON STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–6516. STEFFEN *v.* MAULDIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93–6517. TYLER ET AL. *v.* ASHCROFT, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1019.

No. 93–6518. ASHRAF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–6519. ARNICK *v.* UNION ELECTRIC CO. ET AL. C. A. 8th Cir. Certiorari denied.

No. 93–6522. SLOAN *v.* SLOAN. Sup. Ct. Va. Certiorari denied.

No. 93–6523. CARLUCCI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93-6524. DOWDY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-6535. MORRIS *v.* LAURY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93-6538. GILES *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1149.

No. 93-6543. LABOY *v.* O'MALLEY ET AL. C. A. 7th Cir. Certiorari denied.

No. 93-6545. GIBBS *v.* CLEMENTS FOOD CO. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 310.

No. 93-6547. BYRD *v.* CARROLL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 967 F. 2d 584.

No. 93-6549. HUNT *v.* BRADLEY, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 1151.

No. 93-6550. REBER ET AL. *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 539.

No. 93-6553. LEE *v.* CALDWELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1149.

No. 93-6554. NWABUEZE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 544.

No. 93-6567. FLAGG *v.* CONTROL DATA CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93-6568. JACKSON *v.* MALECEK. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93-6574. SMITH *v.* DELO ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 827.

No. 93-6576. BISHOP *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1344.

No. 93–6582. KELLAM *v.* LINAHAN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1023.

No. 93–6584. YOUNG *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 93–6585. STRIBLING *v.* COLLINS ET AL. C. A. 5th Cir. Certiorari denied.

No. 93–6586. WEDINGTON *v.* FEDERAL CORRECTIONAL INSTITUTION, BUTNER, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1235.

No. 93–6587. HARRISON *v.* ROGERS, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 990 F. 2d 1377.

No. 93–6588. GONZALEZ *v.* BURSON, ATTORNEY GENERAL OF TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–6591. KIM *v.* REICH, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 217.

No. 93–6594. GARCIA *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–6597. TSCHUPP *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied.

No. 93–6598. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1579.

No. 93–6615. BOSWELL *v.* LAFOREST ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 232.

No. 93–6616. COOPER *v.* PAROLE AND PROBATION COMMISSION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 626 So. 2d 204.

No. 93–6620. HERSHIPS *v.* STATE BAR OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–6623. BARNES *v.* UNITED STATES; and
No. 93–6762. KECK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93–6626. HAMILTON *v.* KIRKPATRICK. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–6628. MCDONALD *v.* HATCH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1225.

No. 93–6629. PENNINGTON *v.* ENDELL, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 93–6631. RODENBAUGH *v.* SINGER. C. A. 3d Cir. Certiorari denied.

No. 93–6633. PRUITT *v.* ROGERS ET AL. C. A. 8th Cir. Certiorari denied.

No. 93–6634. MEDINA *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–6637. MOSES *v.* O'DEA, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1067.

No. 93–6638. PHELPS *v.* LOCKHEED MISSILES & SPACE CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 232.

No. 93–6640. LORRAINE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 414, 613 N. E. 2d 212.

No. 93–6643. LAGO *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 328.

No. 93–6650. JACOB *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 244 Neb. xxii.

No. 93–6652. LAFFEY *v.* INDEPENDENT SCHOOL DISTRICT #625. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93–6653. ESPARZA *v.* MUNOZ. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93–6656. KOWALSKI *v.* OREGON STATE BAR (two cases). Sup. Ct. Ore. Certiorari denied.

No. 93–6660. BIEBER *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 856 P. 2d 811.

No. 93-6662. Cole *v.* Houston, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 22 F. 3d 306.

No. 93-6664. Stokes et ux. *v.* Village of Wurtsboro et al. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 301.

No. 93-6670. Andrade *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 21.

No. 93-6673. Fite *v.* Cantrell et al. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 107.

No. 93-6674. Beauford *v.* Raba et al. C. A. 7th Cir. Certiorari denied.

No. 93-6679. Harris *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 997 F. 2d 1235.

No. 93-6684. McIver *v.* Oregon. Ct. App. Ore. Certiorari denied. Reported below: 118 Ore. App. 162, 845 P. 2d 1315.

No. 93-6686. Hill *v.* Schoubroek et al. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93-6688. Burke *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1150.

No. 93-6689. Dismukes *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93-6690. Schroder *v.* Colorado. Ct. App. Colo. Certiorari denied.

No. 93-6691. Allen *v.* Gallagher. C. A. 9th Cir. Certiorari denied.

No. 93-6694. Hampton *v.* Guarantee Trust Life Insurance Co. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 857 S. W. 2d 434.

No. 93-6695. Gumpl *v.* Bost et al. Ct. App. Ohio, Warren County. Certiorari denied. Reported below: 88 Ohio App. 3d 325, 623 N. E. 2d 1291.

No. 93–6697. Ortiz *v.* Starr et al. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–6703. Watkins *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–6704. Marren *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 995 F. 2d 662.

No. 93–6706. Nero *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93–6707. Taylor *v.* Missouri. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 857 S. W. 2d 482.

No. 93–6713. Hargrove *v.* Tansy, Warden. C. A. 10th Cir. Certiorari denied.

No. 93–6717. Piontek *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1219.

No. 93–6718. Hodgson *v.* Ylst, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1157.

No. 93–6719. Howick *v.* United States Postal Service. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1505.

No. 93–6720. Spignor *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 574.

No. 93–6721. Vaseur *v.* Lockhart, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 608.

No. 93–6722. Theriault *v.* Miller, Governor of Nevada, et al. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1419, 875 P. 2d 1081.

No. 93–6723. Wagner *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 906.

No. 93–6726. Battle *v.* Evans et al. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93–6729. Smith *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 436.

No. 93–6730. Sanders *v.* Bunnell, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 539.

No. 93–6732. Johnson *v.* Rosemeyer, Superintendent, Pennsylvania State Correctional Institution at Greensburg, et al. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 811.

No. 93–6733. Johnson *v.* Shillinger, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 1045.

No. 93–6735. Goines et al. *v.* James et al. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 189 W. Va. 634, 433 S. E. 2d 572.

No. 93–6736. Zack *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1068.

No. 93–6737. Zuckerman *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 815.

No. 93–6738. Berg *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93–6739. Logan *v.* Lockhart, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 1324.

No. 93–6740. Ramos *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93–6742. Moland *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 259.

No. 93–6744. Pifer *v.* Bunnell, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1157.

No. 93–6745. Clark *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–6746. Crawford *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 106.

No. 93–6748. Scaife *v.* Hannigan, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 1045.

No. 93–6749. WHITE *v.* SMITH, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 93–6751. DEBARDELEBEN *v.* MATTHEWS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1160.

No. 93–6753. BENSON *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 93–6754. WILFORD *v.* SLUSHER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 1152.

No. 93–6756. DUARTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 644.

No. 93–6757. GARZA-JUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 896.

No. 93–6758. KILES *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 175 Ariz. 358, 857 P. 2d 1212.

No. 93–6759. GARGALLO *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL. (two cases). Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 1485, 612 N. E. 2d 1242 (first case); 67 Ohio St. 3d 1408, 615 N. E. 2d 1043 (second case).

No. 93–6760. KESEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 436.

No. 93–6761. GLADNEY *v.* GILLESS ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–6763. FORTNER *v.* SNOW. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1023.

No. 93–6765. KURYLCZYK *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 443 Mich. 289, 505 N. W. 2d 528.

No. 93–6766. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–6767. IBARRA-ALEJANDRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93–6769. Trotman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 439.

No. 93–6770. Patterson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93–6773. Greathouse *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93–6774. Watson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93–6775. Pittman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 988.

No. 93–6776. Hicks *v.* Baltimore Gas & Electric Co. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1009.

No. 93–6778. Phillips *v.* City of Thomaston, Georgia, et al. C. A. 11th Cir. Certiorari denied.

No. 93–6783. Barron *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 540.

No. 93–6785. Garrett *v.* Jones, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 1548.

No. 93–6787. Kidd *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–6794. Abdul-Khaliq *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 986.

No. 93–6795. Fleming *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93–6797. Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 404.

No. 93–6798. Ward *v.* Department of Corrections. Ct. App. Mich. Certiorari denied.

No. 93–6800. Bolner *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 440.

No. 93–6802. Harris *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93-6803. HEIMERMANN *v.* WISCONSIN STATE PUBLIC DEFENDER. Sup. Ct. Wis. Certiorari denied.

No. 93-6804. SIMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 439.

No. 93-6806. MEDINA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 886.

No. 93-6807. MCADORY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93-6808. MIRANDA-ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93-6809. MAYABB *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-6813. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93-6816. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1542.

No. 93-6818. CARRILLO-RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93-6819. NUNLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 230.

No. 93-6821. PERNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93-6822. RODRIGUEZ-GALINDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93-6825. HENDERSON, AKA STERN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93-6829. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93-6832. KUHBANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 1043.

No. 93-6833. FERGUSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 532.

No. 93-6834. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 994.

No. 93-6838. CARANGELO ET AL. *v.* WEICKER, GOVERNOR OF CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 93-6839. ARGENCOURT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 1300.

No. 93-6844. BRANCH *v.* HENNEPIN COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied.

No. 93-6847. HENDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1583.

No. 93-6851. BARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93-6852. TERAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 546.

No. 93-6859. REINKE *v.* UNITED STATES (three cases). C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1259.

No. 93-6860. BETHEA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93-6861. GRANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93-6864. KNOX *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 824.

No. 93-6871. WAKEFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 989.

No. 93-6872. NELSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 548.

No. 93-6876. TUESCA-NOGUERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 983.

No. 93-6877. SMITH ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 1088.

No. 93-6880. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 989.

No. 93–6883. Downs *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93–6884. Contreras-Aquino *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 989.

No. 93–6886. Williams *v.* Maryland Home Improvement Commission. Ct. Sp. App. Md. Certiorari denied.

No. 93–6890. Martinez *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 1191.

No. 93–6895. Glover *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93–6896. Hogg *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93–6898. Newsome *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1571.

No. 93–6901. Richard *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 102.

No. 93–6902. Meier *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 542.

No. 93–6903. Perry *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 1101.

No. 93–6908. Cadeau *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93–6910. Jackson *v.* Wisneski. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 233.

No. 93–6911. Hernandez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1216.

No. 93–6914. Ferenc, aka Rowe *v.* Commissioner of Internal Revenue. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 120.

No. 93–6920. Arreola-Macias *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–6925. Arnold *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93–6926. McIntyre *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 997 F. 2d 687.

No. 93–6927. Romero-Aguilar *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1264.

No. 93–6929. Moore *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 93–6931. Price *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–6934. Cooper *v.* Salomon Brothers, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 82.

No. 93–6935. Cataldi *v.* Carter et al. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–6943. Newman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93–6944. Rawls *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1571.

No. 93–6945. Ross *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93–6951. Trout *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1571.

No. 93–6954. Flores *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93–6955. Hicks *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–6956. Gilbert *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–6959. Ono *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 997 F. 2d 647.

No. 93–6960. Liquori *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 435.

No. 93–6964. Lilly *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 542.

No. 93–6965. MARIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 679.

No. 93–6966. KELLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 10 F. 3d 696.

No. 93–6967. FOULKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 238.

No. 93–6969. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93–6972. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 544.

No. 93–6981. TREAS-WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 3 F. 3d 1406.

No. 92–989. TENNESSEE *v.* MIDDLEBROOKS; and TENNESSEE *v.* EVANS. Sup. Ct. Tenn. Motion of respondent Jonathan Vaughn Evans for leave to proceed *in forma pauperis* granted. Certiorari as to Jonathan Vaughn Evans denied. Reported below: 838 S. W. 2d 185 (second case).

No. 93–224. TENNESSEE *v.* SPARKS. Sup. Ct. Tenn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 93–401. ALABAMA *v.* BROWNING. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93–406. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA (CORRELL ET AL., REAL PARTIES IN INTEREST). C. A. 9th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of respondents Michael Emerson Correll et al. for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 93–507. ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND, DBA TULANE MEDICAL CENTER HOSPITAL AND CLINIC, ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 987 F. 2d 790.

No. 93–5762. PROFETA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 995 F. 2d 306.

No. 93–6074. ESPANA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

No. 93–6170. JONES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition. Reported below: 997 F. 2d 1475.

No. 93–680. HUBBARD, SECURITIES COMMISSIONER OF DELAWARE *v.* OLDE DISCOUNT CORP. C. A. 3d Cir. Motion of North American Securities Administrators Association, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 1 F. 3d 202.

No. 93–6431. BUSH *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 988 F. 2d 1082.

JUSTICE BLACKMUN, dissenting.

I am inclined to agree with Judge Kravitch, 988 F. 2d 1082, 1093 (CA11 1993) (opinion concurring in part and dissenting in part), and would grant certiorari on the issue whether counsel rendered effective assistance as required by the Sixth and Fourteenth Amendments.

Rehearing Denied

No. 92–8494. CABAL *v.* DEPARTMENT OF JUSTICE ET AL., *ante,* p. 831;

No. 92–8870. TURNPAUGH *v.* MICHIGAN, *ante,* p. 975;

No. 92–8982. IN RE HENTHORN, *ante,* p. 809;

No. 92–9114. WILLIS *v.* CITY OF CLEVELAND, *ante,* p. 851;

No. 92–9175. MARTIN *v.* MARYLAND, *ante,* p. 855;

No. 93–210. TRUSTEES OF THE WELFARE TRUST FUND, LOCAL UNION NO. 475, ET AL. *v.* DUNSTON, NEW JERSEY COMMISSIONER OF HEALTH, ET AL., *ante,* p. 944;

No. 93–297. METCALF *v.* FELEC SERVICES ET AL., *ante,* p. 931;

No. 93-303. CARTER ET AL. *v.* UNITED STATES ET AL., *ante*, p. 870;

No. 93-351. WHITE *v.* KENTUCKY, *ante*, p. 946;

No. 93-434. SUSAN R. M., BY HER NEXT FRIEND, CHARLES L. M. *v.* NORTHEAST INDEPENDENT SCHOOL DISTRICT ET AL., *ante*, p. 972;

No. 93-467. TILSON *v.* CITY OF WICHITA, KANSAS, *ante*, p. 976;

No. 93-509. MARINO *v.* WRITERS' GUILD OF AMERICA ET AL., *ante*, p. 978;

No. 93-5063. WILLIAMS *v.* LEHIGH VALLEY CARPENTERS UNION ET AL., *ante*, p. 873;

No. 93-5077. SYRIANI *v.* NORTH CAROLINA, *ante*, p. 948;

No. 93-5101. GILES *v.* THOMAS, WARDEN, *ante*, p. 876;

No. 93-5276. WEST *v.* OKLAHOMA, *ante*, p. 949;

No. 93-5628. STANLEY *v.* WHITE ET AL., *ante*, p. 921;

No. 93-5700. DAVIS *v.* GEORGIA, *ante*, p. 950;

No. 93-5753. HILL *v.* GEORGIA, *ante*, p. 950;

No. 93-5783. THOMAS *v.* UNITED STATES, *ante*, p. 950;

No. 93-5846. RICHARDS *v.* MEDICAL CENTER OF DELAWARE INC. ET AL., *ante*, p. 951;

No. 93-5911. PARTEE *v.* GODINEZ, WARDEN, *ante*, p. 952;

No. 93-5954. TRIESTMAN *v.* UNITED STATES, *ante*, p. 953;

No. 93-5957. DAVIS *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 953;

No. 93-5967. HUMPHREY *v.* COLEMAN ET AL., *ante*, p. 954;

No. 93-5988. LIGHTBOURNE *v.* CHILES, GOVERNOR OF FLORIDA, ET AL., *ante*, p. 967;

No. 93-6002. PIPKINS *v.* STATE BAR OF NEVADA, *ante*, p. 968;

No. 93-6005. SCHUSTER *v.* SOUTH DAKOTA, *ante*, p. 968;

No. 93-6023. CARR *v.* CALIFORNIA, *ante*, p. 969;

No. 93-6024. BAXTER *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL., *ante*, p. 969;

No. 93-6033. IN RE MANFRED, *ante*, p. 975;

No. 93-6034. REYNA *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL., *ante*, p. 969;

No. 93-6038. COWTHRAN *v.* BROOKSHIRE GROCERY CO., *ante*, p. 955;

No. 93-6089. NORTH *v.* OKLAHOMA, *ante*, p. 970;

No. 93–6090. HYDER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 970;

No. 93–6106. LEWIS *v.* MORRIS, WARDEN, ET AL., *ante*, p. 980;

No. 93–6114. IN RE BROOKS ET AL., *ante*, p. 975;

No. 93–6117. SLOAN *v.* JONES ET AL., *ante*, p. 956;

No. 93–6133. JOHNSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, *ante*, p. 957;

No. 93–6136. SPINDLE *v.* BERRONG, WARDEN, *ante*, p. 980;

No. 93–6151. HENRY *v.* GULFPORT PAPER CO., INC., *ante*, p. 981;

No. 93–6173. HUGHEY *v.* HAMPTON, WARDEN, ET AL., *ante*, p. 981;

No. 93–6184. IN RE BOTELLO, *ante*, p. 942;

No. 93–6291. IN RE NEWTOP, *ante*, p. 988;

No. 93–6346. BARTLETT *v.* DOMOVICH, WARDEN, ET AL., *ante*, p. 972; and

No. 93–6430. IN RE PORZIO, *ante*, p. 975. Petitions for rehearing denied.

No. 90–1397. IN RE AINSWORTH, 500 U. S. 903. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Motion for leave to file petition for rehearing denied.

No. 92–9082. KLEINSCHMIDT *v.* SCHWARTZ, CHIEF JUDGE, DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, ET AL., *ante*, p. 849; and

No. 92–9159. JEFFRESS *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, *ante*, p. 854. Motions for leave to file petitions for rehearing denied.

No. 93–277. THERIOT ET AL. *v.* GREAT WESTERN COCA-COLA BOTTLING, DBA COCA-COLA BOTTLING COMPANY OF HOUSTON, *ante*, p. 972. Petition for rehearing denied. JUSTICE BLACKMUN took no part in the consideration or decision of this petition.

JANUARY 14, 1994

Certiorari Granted

No. 93–639. IBANEZ *v.* FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, BOARD OF ACCOUNTANCY. Dist. Ct. App. Fla., 1st Dist. Certiorari granted. Reported below: 621 So. 2d 435.

No. 93–644. HONDA MOTOR CO., LTD., ET AL. *v.* OBERG. Sup. Ct. Ore. Certiorari granted. Reported below: 316 Ore. 263, 851 P. 2d 1084.

No. 93–744. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* GREENWICH COLLIERIES ET AL.; and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* MAHER TERMINALS, INC., ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 990 F. 2d 730 (first case); 992 F. 2d 1277 (second case).

No. 93–6188. HECK *v.* HUMPHREY ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 997 F. 2d 355.

JANUARY 18, 1994

Appeals Dismissed

No. 93–835. MOORE, ATTORNEY GENERAL OF MISSISSIPPI, ET AL. *v.* DUPREE ET AL.; and

No. 93–836. LAMAR COUNTY BOARD OF EDUCATION AND TRUSTEES ET AL. *v.* DUPREE ET AL. Appeals from D. C. S. D. Miss. dismissed for want of jurisdiction. Reported below: 831 F. Supp. 1310.

Certiorari Granted—Vacated and Remanded

No. 92–1139. CARLISLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ratzlaf* v. *United States, ante,* p. 135. Reported below: 967 F. 2d 592.

No. 92–1841. SHIRK *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ratzlaf* v. *United States, ante,* p. 135. Reported below: 981 F. 2d 1382.

No. 92–7410. PITNER *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ratzlaf* v. *United States, ante,* p. 135. Reported below: 967 F. 2d 595 and 979 F. 2d 156.

No. 92–8218. DONOVAN *v.* UNITED STATES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ratzlaf* v. *United States, ante,* p. 135. Reported below: 984 F. 2d 493.

No. 92–8761. HANSON *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ratzlaf* v. *United States, ante,* p. 135. Reported below: 967 F. 2d 595 and 979 F. 2d 156.

No. 92–9105. GREEN *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed November 3, 1993. Reported below: 988 F. 2d 1213.

Miscellaneous Orders

No. ———. DAS *v.* CIBA CORNING DIAGNOSTIC CORP.;
No. ———. TOWE ANTIQUE FORD FOUNDATION *v.* INTERNAL REVENUE SERVICE; and
No. ———. GRANT INVESTMENT FUNDS *v.* INTERNAL REVENUE SERVICE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. D–1352. IN RE DISBARMENT OF HULNICK. It is ordered that Robert B. Hulnick, Jr., of West Chester, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1353. IN RE DISBARMENT OF CONROY. It is ordered that J. Patrick Conroy, of Downey, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1354. IN RE DISBARMENT OF MICKS. It is ordered that Deitra Raverne Handy Micks, of Jacksonville, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1355. In re Disbarment of Cohen. It is ordered that Allen C. Cohen, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 93–768. Milwaukee Brewery Workers' Pension Plan *v.* Jos. Schlitz Brewing Co. et al. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States with respect to Question 1 presented by the petition.

No. 93–908. Reich *v.* Collins, Revenue Commissioner of Georgia, et al. Sup. Ct. Ga. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 93–6250. Bruce *v.* California Department of Corrections et al. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 988] denied.

No. 93–6791. Meier *v.* Levinson et al. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 8, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 93–7198. In re Thomas. Petition for writ of habeas corpus denied.

No. 93–6855. In re Ferri. Petition for writ of mandamus denied.

No. 93–6790. In re Sims. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 92–8876. Kennedy *v.* Washington, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 986 F. 2d 1129.

No. 93–349. Mugford *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93-429. Episcopal Hospital et al. *v.* Shalala, Secretary of Health and Human Services. C. A. D. C. Cir. Certiorari denied. Reported below: 994 F. 2d 879.

No. 93-464. G-K Development Co., Inc. *v.* Broadmoor Place Investments et al. C. A. 10th Cir. Certiorari denied. Reported below: 994 F. 2d 744.

No. 93-575. Idaho et al. *v.* Arnzen. Sup. Ct. Idaho. Certiorari denied. Reported below: 123 Idaho 899, 854 P. 2d 242.

No. 93-590. Schmidt et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 843.

No. 93-613. Tesoreria General de la Seguridad Social de Espana *v.* Banco de Credito Industrial, S. A. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 827.

No. 93-618. Shields *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 999 F. 2d 1090.

No. 93-620. Milena Ship Management Co., Ltd., et al. *v.* Newcomb, Director, Office of Foreign Assets Control, Department of the Treasury, et al. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 620.

No. 93-630. League of United Latin American Citizens et al. *v.* Attorney General of Texas et al.;

No. 93-871. Wood *v.* Attorney General of Texas et al.; and

No. 93-928. Attorney General of Texas et al. *v.* Entz et al. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 831.

No. 93-632. Antares Aircraft, L. P. *v.* Federal Republic of Nigeria et al. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 33.

No. 93-635. Gerber *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 999 F. 2d 1112.

No. 93-657. City of Chicago *v.* Willis; and

No. 93-875. Willis *v.* City of Chicago. C. A. 7th Cir. Certiorari denied. Reported below: 999 F. 2d 284.

No. 93–691. PHIPPS *v.* WILSON. Ct. App. Ind. Certiorari denied. Reported below: 610 N. E. 2d 851.

No. 93–705. PUDLO *v.* ADAMSKI ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 1153.

No. 93–706. GRIFFES, COMMISSIONER, VERMONT DEPARTMENT OF MOTOR VEHICLES *v.* BARRINGER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 1331.

No. 93–735. GOINS *v.* LANG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 996 F. 2d 1221.

No. 93–745. SHANDS ET AL. *v.* CITY OF KENNETT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 993 F. 2d 1337.

No. 93–769. UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO/CLC *v.* AGUINAGA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 993 F. 2d 1463.

No. 93–778. BP NORTH AMERICA PETROLEUM, INC. *v.* ROBERT E. LEE S. S. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1193 and 999 F. 2d 105.

No. 93–780. ST. LOUIS SOUTH PARK, INC., DBA MERCY CONVALESCENT *v.* MISSOURI DEPARTMENT OF SOCIAL SERVICES, DIVISION OF MEDICAL SERVICES. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 857 S. W. 2d 304.

No. 93–782. KANZA *v.* EMPIRE SERVICES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1214.

No. 93–784. UNITED TRANSPORTATION UNION ET AL. *v.* UNION PACIFIC RAILROAD CO. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 255.

No. 93–790. LARSON *v.* BOARD OF FIRE AND POLICE COMMISSIONERS OF CALUMET CITY, ILLINOIS, ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 237 Ill. App. 3d 1104, 650 N. E. 2d 21.

No. 93–791. GROENE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 604.

No. 93–794. GILLUM *v.* CITY OF KERRVILLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 117.

No. 93–795. BLUE CROSS/BLUE SHIELD OF CONNECTICUT *v.* INTER VALLEY HEALTH PLAN. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 16 Cal. App. 4th 60, 19 Cal. Rptr. 2d 782.

No. 93–805. WOLSKY *v.* MEDICAL COLLEGE OF HAMPTON ROADS. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 222.

No. 93–806. OHAI *v.* COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF SANTA FE SPRINGS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–807. WITHROW *v.* WILLIAMS. C. A. 6th Cir. Certiorari denied. Reported below: 2 F. 3d 1152.

No. 93–819. JANEAU *v.* PITMAN MANUFACTURING CO., INC. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1009.

No. 93–820. FOX *v.* NATURAL GAS PIPELINE COMPANY OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 1397.

No. 93–824. VINCENT, ADMINISTRATOR OF THE ESTATE OF KNICK *v.* CITY OF LEXINGTON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 988.

No. 93–826. BERMAN ENTERPRISES, INC., ET AL. *v.* JORLING, COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 3 F. 3d 602.

No. 93–827. BALCOR FILM INVESTORS ET AL. *v.* ECKSTEIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 8 F. 3d 1121.

No. 93–840. SCOTT *v.* AVON PRODUCTS, INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–844. WARNER *v.* ZENT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 997 F. 2d 116.

No. 93–847. HICKS *v.* ROARK ET AL. Sup. Ct. Va. Certiorari denied.

No. 93–848. Standard Fire Insurance Co. *v.* Burnaby. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–853. Rowland *v.* Kingman. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 629 A. 2d 613.

No. 93–872. Smith *v.* Department of Veterans Affairs et al. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1227.

No. 93–884. Peck *v.* Tegtmeyer. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 985.

No. 93–885. Alvarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1228.

No. 93–886. Flores et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1070.

No. 93–909. Long et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 1290.

No. 93–917. Keels *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1233.

No. 93–918. Democratic Central Committee of the District of Columbia et al. *v.* Washington Metropolitan Area Transit Commission et al. C. A. D. C. Cir. Certiorari denied.

No. 93–922. DeMartino *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1536.

No. 93–925. Goldbecker et al. *v.* Fairfax County Economic Development Authority et al. Sup. Ct. Va. Certiorari denied.

No. 93–5691. Martinez-Mancilla *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1544.

No. 93–5724. Riles *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 93–5812. Rivers *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 93–5835. Botello *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 189.

No. 93-6008. ALAGA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 995 F. 2d 380.

No. 93-6042. KRUSE *v.* IOWA DEPARTMENT OF HUMAN SERVICES. Ct. App. Iowa. Certiorari denied. Reported below: 500 N. W. 2d 455.

No. 93-6086. ROMULUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1213.

No. 93-6102. FRITZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 136.

No. 93-6162. NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1238.

No. 93-6212. PETERS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 855 S. W. 2d 345.

No. 93-6293. WILLIAMS ET UX. *v.* SEEBER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1012.

No. 93-6300. TODARO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1243.

No. 93-6343. SCHAEFERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1492.

No. 93-6344. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93-6427. NWOLISE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 306.

No. 93-6457. ALEXANDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 93-6461. TESTA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 9 F. 3d 977.

No. 93-6496. JINDRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 113.

No. 93-6521. THOMAS *v.* DEPARTMENT OF STATE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93–6527. LOVEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1021.

No. 93–6560. VASQUEZ-OLVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 943.

No. 93–6562. BLACKSHEAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1242.

No. 93–6649. KENNEDY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1220.

No. 93–6698. SHAH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 991.

No. 93–6752. ZARAGOZA *v.* ZARAGOZA. Ct. App. S. C. Certiorari denied. Reported below: 309 S. C. 149, 420 S. E. 2d 516.

No. 93–6755. DOBLES *v.* SAN DIEGO DEPARTMENT OF SOCIAL SERVICES. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–6764. GROSE *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1505.

No. 93–6768. TAYLOR *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 710.

No. 93–6779. LAITY *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1504.

No. 93–6786. KENNEDY *v.* LITTLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–6789. WILSON *v.* O'MALLEY ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–6792. GARCED *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 193 App. Div. 2d 829, 597 N. Y. S. 2d 497.

No. 93–6793. MURTHA *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 14 Cal. App. 4th 1112, 18 Cal. Rptr. 2d 324.

No. 93–6799. Gilliam *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 331 Md. 651, 629 A. 2d 685.

No. 93–6805. Wright *v.* Fry. C. A. 6th Cir. Certiorari denied.

No. 93–6815. Thomas *v.* Garrett Fluid Systems, Inc., et al. C. A. 9th Cir. Certiorari denied.

No. 93–6827. James *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 191 App. Div. 2d 957, 594 N. Y. S. 2d 499.

No. 93–6835. Buckner et al. *v.* Taylor et al. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–6842. Corethers *v.* Lakeside University Hospital et al. C. A. 6th Cir. Certiorari denied.

No. 93–6845. Dobson *v.* Gabriel et al. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1002.

No. 93–6867. Bivins *v.* Indiana. Sup. Ct. Ind. Certiorari denied.

No. 93–6868. Trepal *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 621 So. 2d 1361.

No. 93–6870. Condosta *v.* Vermont. C. A. 2d Cir. Certiorari denied.

No. 93–6878. Young *v.* Stepanik et al. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 815.

No. 93–6879. Coleman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 997 F. 2d 1101.

No. 93–6904. Norton *v.* University of Michigan et al. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1067.

No. 93–6907. Smith *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93–6928. McKee *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 998 F. 2d 91.

No. 93–6932. POLEWSKY *v.* BAY COLONY RAILROAD CORP. (two cases). C. A. 2d Cir. Certiorari denied.

No. 93–6939. CASAS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 1225.

No. 93–6941. CHOICE *v.* BEYER, SUPERINTENDENT, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–6950. M. R. *v.* TEXAS. Sup. Ct. Tex. Certiorari denied. Reported below: 858 S. W. 2d 365.

No. 93–6970. COLEMAN *v.* WEST, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 222.

No. 93–6976. DURAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 4 F. 3d 800.

No. 93–6978. DEVERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 990.

No. 93–6979. WASHINGTON *v.* JAMES, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 1442.

No. 93–6980. WALTERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–6984. HERSHKO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 221.

No. 93–6995. EDELIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 996 F. 2d 1238.

No. 93–6996. WATTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 122.

No. 93–6998. CALISE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1019.

No. 93–6999. ANDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 532.

No. 93–7003. O'NEILL *v.* SHIPLEVY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 213.

No. 93–7005. LEE *v.* RYAN. C. A. 2d Cir. Certiorari denied.

No. 93–7007. NUNEZ-OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93–7008. MCKINNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 542.

No. 93–7009. RESTREPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93–7011. MULLENDORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 437.

No. 93–7012. MCDAUGHTERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 537.

No. 93–7017. PAPE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 117.

No. 93–7019. COOKS *v.* KENEDY INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93–7021. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 528.

No. 93–7022. HAUGEN *v.* CLARK. Sup. Ct. Nev. Certiorari denied. Reported below: 109 Nev. 1400, 875 P. 2d 1062.

No. 93–7023. REED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 1441.

No. 93–7037. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1497.

No. 93–7046. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 813.

No. 93–7047. GRYGAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–7049. GREENE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93–7052. BREWER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1001.

No. 93–7053. CASTANEDA-FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93-7055. Sparks *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 574.

No. 93-7058. West *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93-7064. Johnson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93-7070. Schepis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1150.

No. 93-7081. Khan *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 220.

No. 93-7082. Arriaga *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1018.

No. 93-7083. Tyler *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93-7089. Rivera-Farias *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93-7092. Lawal *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 528.

No. 93-7093. Lara *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 543.

No. 93-7094. Rockman *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 811.

No. 93-7096. Nwafor *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 473.

No. 93-7097. Bachsian *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 4 F. 3d 796.

No. 93-7100. Dupard *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 882.

No. 93-7119. Saavedra *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 622 So. 2d 952.

No. 93-7143. Schneider *v.* Erickson, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 760.

No. 93-7177. JOHNS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 92-1392. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* SCHOOLCRAFT ET AL.; and

No. 92-1395. ROERS, DIRECTOR OF MINNESOTA DISABILITY DETERMINATION SERVICES, ET AL. *v.* SCHOOLCRAFT ET AL. C. A. 8th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Motion of the parties to vacate and remand denied. Certiorari denied. Reported below: 971 F. 2d 81.

No. 93-423. KATSIS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 3d Cir. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Certiorari denied. Reported below: 997 F. 2d 1067.

No. 93-720. STEFFEN, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN SERVICES *v.* MITCHELL ET AL. Sup. Ct. Minn. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 504 N. W. 2d 198.

No. 93-772. WILSON, GOVERNOR OF CALIFORNIA, ET AL. *v.* BIGGS ET AL. C. A. 9th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 1 F. 3d 1537.

No. 93-779. HUNTER *v.* CARBONDALE AREA SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE BLACKMUN would grant certiorari. Reported below: 5 F. 3d 1489.

No. 93-888. JACKSON ET AL. *v.* MITCHELL ET AL. Sup. Jud. Ct. Me. Motion of respondents for award of damages denied. Certiorari denied. Reported below: 627 A. 2d 1014.

No. 93-6788. STEWART *v.* BENTSEN, SECRETARY OF THE TREASURY. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

Rehearing Denied

No. 92-1123. IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA *v.* U. S. PHILIPS CORP. ET AL., *ante*, p. 27;

No. 93-421. EICHELBERGER ET AL. *v.* BALETTE ET AL., *ante*, p. 991;

No. 93–502. In re Cordova-Gonzalez, *ante*, p. 992;

No. 93–544. Molina de Hernandez *v.* Arizona, *ante*, p. 993;

No. 93–5263. Swain *v.* Accountants on Call, *ante*, p. 884;

No. 93–5639. Swain *v.* Decatur Federal Savings & Loan Assn., *ante*, p. 922;

No. 93–5803. Henderson *v.* Bank of New England, *ante*, p. 995;

No. 93–6057. Wahi *v.* Herman, *ante*, p. 969;

No. 93–6091. Moats *v.* Reid et al., *ante*, p. 970;

No. 93–6242. Jaakkola *v.* State Industrial Insurance System, *ante*, p. 997;

No. 93–6288. Wohlford et ux. *v.* United States, *ante*, p. 998;

No. 93–6336. Sias *v.* Singletary, Secretary, Florida Department of Corrections, *ante*, p. 1015;

No. 93–6340. Corethers *v.* State of Ohio Prosecutor et al., *ante*, p. 999;

No. 93–6378. Mendez *v.* Zingers, *ante*, p. 1016;

No. 93–6450. Peeples *v.* Illinois, *ante*, p. 1016;

No. 93–6480. Talon *v.* Brown, Secretary of Veterans Affairs, *ante*, p. 1028;

No. 93–6529. Mantilla *v.* United States, *ante*, p. 1002; and

No. 93–6642. In re Monroe, *ante*, p. 988. Petitions for rehearing denied.

No. 92–6794. Vereen *v.* United States, 507 U. S. 927. Motion for leave to file petition for rehearing denied.

Assignment Order

An order of The Chief Justice designating Justice White (retired) to perform judicial duties in the United States Court of Appeals for the Tenth Circuit during the period of March 14 through March 18, 1994, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

January 21, 1994

Miscellaneous Order

No. 93–5256. Williamson *v.* United States. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1039.] In lieu of the first question presented by the petition for writ of certiorari, the parties are directed to brief and argue, in addition to Questions 2 and 3, the following question: "Whether a postarrest confession by an accomplice implicating a defendant, offered as an admission against penal interest of an unavailable declarant under Federal Rule of Evidence 804(b)(3), bears adequate indicia of reliability to render it admissible under Rule 804(b)(3) and the Sixth Amendment Confrontation Clause?"

Certiorari Granted

No. 92–1920. LIVADAS *v.* AUBRY, CALIFORNIA LABOR COMMISSIONER. C. A. 9th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 4, 1994. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 1, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 15, 1994. This Court's Rule 29 does not apply. Reported below: 987 F. 2d 552.

No. 92–2058. HAWAIIAN AIRLINES, INC. *v.* NORRIS; and FINAZZO ET AL. *v.* NORRIS. Sup. Ct. Haw. Certiorari granted limited to the following question: "Whether the Hawaii Supreme Court erred in concluding that respondent's state law wrongful discharge claims were not preempted by the Railway Labor Act, 45 U. S. C. § 151 *et seq.*" Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 4, 1994. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 1, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 15, 1994. This Court's Rule 29 does not apply. Reported below: 74 Haw. 648, 847 P. 2d 263 (first case); 74 Haw. 235, 842 P. 2d 634 (second case).

No. 93–201. ALLEN & CO., INC. *v.* PACIFIC DUNLOP HOLDINGS INC. C. A. 7th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 4, 1994. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 1, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 15, 1994. This Court's Rule 29 does not apply. Reported below: 993 F. 2d 578.

No. 93–880. MADSEN ET AL. *v.* WOMEN'S HEALTH CENTER, INC., ET AL. Sup. Ct. Fla. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 4, 1994. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 1, 1994. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 15, 1994. This Court's Rule 29 does not apply. Reported below: 626 So. 2d 664.

JANUARY 24, 1994

Dismissal Under Rule 46

No. 93–899. CLAYTON ET AL. *v.* CITY OF KILLEEN ET AL. C. A. 5th Cir. Certiorari dismissed as to Monica Poole Clayton and Mozell Carter under this Court's Rule 46. Reported below: 999 F. 2d 1580.

Miscellaneous Orders

No. — — —. MATTHEWS *v.* WATERS ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. A–550 (93–1095). RIVERA *v.* UNITED STATES. C. A. 2d Cir. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. 93–289. DALTON, SECRETARY OF THE NAVY, ET AL. *v.* SPECTER ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 930.] Motion of Public Citizen for leave to file a brief as *amicus curiae* granted.

No. 93–356. MCI TELECOMMUNICATIONS CORP. *v.* AMERICAN TELEPHONE & TELEGRAPH CO.; and

No. 93–521. UNITED STATES ET AL. *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 989.] Motion of petitioners to dispense with printing the joint appendix granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 93-404. GUSTAFSON ET AL. *v.* ALLOYD CO., INC., FKA ALLOYD HOLDINGS, INC., ET AL. C. A. 7th Cir. Motion of petitioners to consolidate this petition with No. 93-201, *Allen & Co., Inc.* v. *Pacific Dunlop Holdings Inc.* [certiorari granted, *ante*, p. 1083], denied.

No. 93-696. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* OHIO STATE UNIVERSITY, DBA OHIO STATE HOSPITALS. C. A. 6th Cir. Motion of respondent to expedite consideration of petition for writ of certiorari denied.

No. 93-1151. FEDERAL ELECTION COMMISSION *v.* NRA POLITICAL VICTORY FUND ET AL. C. A. D. C. Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this motion.

No. 93-6498. IN RE ANDERSON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1023] denied.

No. 93-6781. IN RE NEWTOP; and
No. 93-6782. IN RE NEWTOP. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until February 14, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93-7286. IN RE ZILS. Petition for writ of habeas corpus denied.

No. 93-6888. IN RE WARD. Petition for writ of mandamus denied.

Certiorari Denied

No. 92-1102. GRAF *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 35 M. J. 450.

No. 92-1519. COSNER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 35 M. J. 278.

No. 92-1637. IBARRA, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* DUC VAN LE. Sup. Ct. Colo. Certiorari denied. Reported below: 843 P. 2d 15.

No. 92–1646. Barkley *v.* United States (Reported below: 37 M. J. 198); Rice *v.* United States (36 M. J. 264); Carney *v.* United States (37 M. J. 198); Denet *v.* United States (37 M. J. 198); Herron *v.* United States (37 M. J. 198); Gill *v.* United States (37 M. J. 198); Haywood *v.* United States (37 M. J. 198); Herlong *v.* United States (37 M. J. 198); Holland *v.* United States (37 M. J. 198); McDonald *v.* United States (37 M. J. 198); Morrison *v.* United States (37 M. J. 198); Sier *v.* United States (37 M. J. 198); Aguiar *v.* United States (37 M. J. 200); Clayton *v.* United States (37 M. J. 200); Fergerson *v.* United States (37 M. J. 200); Hill *v.* United States (37 M. J. 201); Honabach *v.* United States (37 M. J. 200); Hylin *v.* United States (37 M. J. 200); Jackson *v.* United States (37 M. J. 200); Lee *v.* United States (37 M. J. 200); Martin *v.* United States (37 M. J. 200); Bailey *v.* United States (37 M. J. 202); Gerwin *v.* United States (37 M. J. 203); Johnson *v.* United States (37 M. J. 202); O'Halloran *v.* United States (37 M. J. 202); Parker *v.* United States (37 M. J. 202); Robinson *v.* United States (37 M. J. 202); Wilcoxson *v.* United States (37 M. J. 202); Baker *v.* United States (37 M. J. 206); Canty *v.* United States (37 M. J. 206); Evans *v.* United States (37 M. J. 206); Grant *v.* United States (37 M. J. 206); Hayward *v.* United States (37 M. J. 207); Madison *v.* United States (37 M. J. 206); McLendon *v.* United States (37 M. J. 206); Wood *v.* United States (37 M. J. 206); Barkley *v.* United States (37 M. J. 208); Bell *v.* United States (37 M. J. 208); Caponetto *v.* United States (37 M. J. 208); Clemons *v.* United States (37 M. J. 208); Craft *v.* United States (37 M. J. 208); Curtis *v.* United States (37 M. J. 208); Estes *v.* United States (37 M. J. 208); Phillips *v.* United States (37 M. J. 208); Sam *v.* United States (37 M. J. 208); Sentell *v.* United States (37 M. J. 208); Garner *v.* United States (37 M. J. 210); Dallman *v.* United States (37 M. J. 213); Grim *v.* United States (37 M. J. 230); Hamilton *v.* United States (37 M. J. 231); Mettler *v.* United States (37 M. J. 231); Palaita *v.* United States (37 M. J. 231); Bickels *v.* United States (37 M. J. 234); Bradley *v.* United States (37 M. J. 235); Franco *v.* United States (37 M. J. 235); Schmidt *v.* United States (37 M. J. 234); Urick *v.* United States (37 M. J. 237); Walker *v.* United States (37 M. J. 235); Brown *v.* United States (37 M. J. 238); Choy *v.* United States (37 M. J. 238); Correia *v.* United States (37 M. J. 238); Gray *v.* United

STATES (37 M. J. 238); HOLLOWAY *v.* UNITED STATES (37 M. J. 238); MURPHY *v.* UNITED STATES (37 M. J. 238); SAMS *v.* UNITED STATES (37 M. J. 238); SCOTT *v.* UNITED STATES (37 M. J. 238); SLEDGE *v.* UNITED STATES (37 M. J. 238); WILLIAMS *v.* UNITED STATES (37 M. J. 238); ALEXANDER *v.* UNITED STATES (37 M. J. 241); BUSBY *v.* UNITED STATES (37 M. J. 242); JACKSON *v.* UNITED STATES (37 M. J. 242); NORTHRUP *v.* UNITED STATES (37 M. J. 241); SPELLINGS *v.* UNITED STATES (37 M. J. 241); THOMAS *v.* UNITED STATES (37 M. J. 241); VINSON *v.* UNITED STATES (37 M. J. 242); WARREN *v.* UNITED STATES (37 M. J. 241); FOSTER *v.* UNITED STATES (37 M. J. 245); KRZCUIK *v.* UNITED STATES (37 M. J. 244); LYN *v.* UNITED STATES (37 M. J. 245); MAHONEY *v.* UNITED STATES (37 M. J. 245); PERKINS *v.* UNITED STATES (37 M. J. 246); ROACH *v.* UNITED STATES (37 M. J. 245); SANCHEZ *v.* UNITED STATES (37 M. J. 246); ARTWELL *v.* UNITED STATES (37 M. J. 249); PONTON *v.* UNITED STATES (37 M. J. 249); PRESSWOOD *v.* UNITED STATES (37 M. J. 249); GOOCH *v.* UNITED STATES (37 M. J. 252); RABB *v.* UNITED STATES (37 M. J. 253); ROBLES *v.* UNITED STATES (37 M. J. 253); TIMONEY *v.* UNITED STATES (37 M. J. 252); BLAIR *v.* UNITED STATES (37 M. J. 255); RICHARDSON *v.* UNITED STATES (37 M. J. 255); ANDERSON *v.* UNITED STATES (37 M. J. 261); HUDDLESTON *v.* UNITED STATES (37 M. J. 260); BENAVIDES *v.* UNITED STATES (37 M. J. 263); BOND *v.* UNITED STATES (37 M. J. 261); BOWERS *v.* UNITED STATES (37 M. J. 261); BROOME *v.* UNITED STATES (37 M. J. 261); BURRELL *v.* UNITED STATES (37 M. J. 260); CUBBERLY *v.* UNITED STATES (37 M. J. 260); HITCHCOCK *v.* UNITED STATES (37 M. J. 260); MERRITT *v.* UNITED STATES (37 M. J. 261); SILAS *v.* UNITED STATES (37 M. J. 263); SMITH *v.* UNITED STATES (37 M. J. 260); ST. BERNARD *v.* UNITED STATES (37 M. J. 260); CHENAULT *v.* UNITED STATES (37 M. J. 263); MATTHEWS *v.* UNITED STATES (37 M. J. 263); MORLEY *v.* UNITED STATES (37 M. J. 263); REICHA *v.* UNITED STATES (37 M. J. 263); RHYMER *v.* UNITED STATES (37 M. J. 263); TILLMAN *v.* UNITED STATES (37 M. J. 263); WADE *v.* UNITED STATES (37 M. J. 263); ALLEN *v.* UNITED STATES (37 M. J. 264); CHAPPLE *v.* UNITED STATES (37 M. J. 264); EBOW *v.* UNITED STATES (37 M. J. 264); FLEENOR *v.* UNITED STATES (37 M. J. 264); HALE *v.* UNITED STATES (37 M. J. 264); LUCAS *v.* UNITED STATES (37 M. J. 264); SCRANTON *v.* UNITED STATES (37 M. J. 264); VASIL *v.* UNITED STATES (37 M. J. 264); WHITE *v.* UNITED STATES (37 M. J. 264); BLACKLEDGE *v.* UNITED STATES (37 M. J. 265); CLOSNER *v.*

UNITED STATES (37 M. J. 265); GONZALEZ *v.* UNITED STATES (37 M. J. 265); GREEN *v.* UNITED STATES (37 M. J. 265); LUMPKINS *v.* UNITED STATES (37 M. J. 265); SHULER *v.* UNITED STATES (37 M. J. 265); STOVALL *v.* UNITED STATES (37 M. J. 265); TURNAGE *v.* UNITED STATES (37 M. J. 265); WARBINGTON *v.* UNITED STATES (37 M. J. 265); WILLIAMS *v.* UNITED STATES (37 M. J. 265); BOYEA *v.* UNITED STATES (37 M. J. 267); BRENT *v.* UNITED STATES (37 M. J. 267); BRYANT *v.* UNITED STATES (37 M. J. 267); DYER *v.* UNITED STATES (37 M. J. 267); FORRESTER *v.* UNITED STATES (37 M. J. 267); JAMES *v.* UNITED STATES (37 M. J. 267); LERDAHL *v.* UNITED STATES (37 M. J. 267); PAGAN *v.* UNITED STATES (37 M. J. 267); ROBINSON *v.* UNITED STATES (37 M. J. 267); TILTON *v.* UNITED STATES (37 M. J. 267); CARMONA *v.* UNITED STATES (37 M. J. 268); HENDERSON *v.* UNITED STATES (37 M. J. 268); JARRETT *v.* UNITED STATES (37 M. J. 268); JONES *v.* UNITED STATES (37 M. J. 268); KIM *v.* UNITED STATES (37 M. J. 268); NORMAN *v.* UNITED STATES (37 M. J. 268); PALACIOS *v.* UNITED STATES (37 M. J. 268); BROOME *v.* UNITED STATES (37 M. J. 269); CHAMNESS *v.* UNITED STATES (37 M. J. 270); FRY *v.* UNITED STATES (37 M. J. 270); HAWKINS *v.* UNITED STATES (37 M. J. 269); MARTINEZ-RODRIGUEZ *v.* UNITED STATES (37 M. J. 269); MCKEE *v.* UNITED STATES (37 M. J. 269); NEWBY *v.* UNITED STATES (37 M. J. 270); RIGBYMETH *v.* UNITED STATES (37 M. J. 269); STORY *v.* UNITED STATES (37 M. J. 270); THOMPSON *v.* UNITED STATES (37 M. J. 269); ADAMS *v.* UNITED STATES (37 M. J. 272); DASCH *v.* UNITED STATES (37 M. J. 272); HAGUE *v.* UNITED STATES (37 M. J. 272); IBANEZ *v.* UNITED STATES (37 M. J. 272); LASTER *v.* UNITED STATES (37 M. J. 271); MOORE *v.* UNITED STATES (37 M. J. 272); PHILLIPS *v.* UNITED STATES (37 M. J. 272); SOLIS *v.* UNITED STATES (37 M. J. 272); WILLIAMS *v.* UNITED STATES (37 M. J. 272); COYLE *v.* UNITED STATES (37 M. J. 273); GRAY *v.* UNITED STATES (37 M. J. 273); GULLEY *v.* UNITED STATES (37 M. J. 273); GULLION *v.* UNITED STATES (37 M. J. 273); HAMILTON-DAVIDSON *v.* UNITED STATES (37 M. J. 273); HOWE *v.* UNITED STATES (37 M. J. 273); JONES *v.* UNITED STATES (37 M. J. 195); THOMAS *v.* UNITED STATES (37 M. J. 196); STROWBRIDGE *v.* UNITED STATES (37 M. J. 197); KRONE *v.* UNITED STATES (37 M. J. 197); POWELL *v.* UNITED STATES (37 M. J. 197); REYES *v.* UNITED STATES (37 M. J. 197); NELSON *v.* UNITED STATES (37 M. J. 200); NEVENER *v.* UNITED STATES (37 M. J. 200); RAYFORD *v.* UNITED STATES (37 M. J. 201); WOODS *v.* UNITED STATES (37 M. J. 200); JIMENEZ *v.* UNITED

States (37 M. J. 202); Medlin *v.* United States (37 M. J. 202); McNichols *v.* United States (37 M. J. 202); Patterson *v.* United States (37 M. J. 202); Slater *v.* United States (37 M. J. 202); Smith *v.* United States (37 M. J. 202); Bradley *v.* United States (37 M. J. 206); Dawson *v.* United States (37 M. J. 206); Roaf *v.* United States (37 M. J. 206); Rodgers *v.* United States (37 M. J. 206); Clarkson *v.* United States (37 M. J. 230); Freeman *v.* United States (37 M. J. 229); Harrison *v.* United States (37 M. J. 230); Ripley *v.* United States (37 M. J. 230); Wildnauer *v.* United States (37 M. J. 229); Bratton *v.* United States (37 M. J. 234); Evans *v.* United States (37 M. J. 234); Hardaway *v.* United States (37 M. J. 234); Morgan *v.* United States (37 M. J. 234); Ramirez *v.* United States (37 M. J. 234); Robinson *v.* United States (37 M. J. 234); White *v.* United States (37 M. J. 234); Borman *v.* United States (37 M. J. 239); Frazier *v.* United States (37 M. J. 239); Starcher *v.* United States (37 M. J. 239); Davis *v.* United States (37 M. J. 240); Talley *v.* United States (37 M. J. 242); Anderson *v.* United States (37 M. J. 244); Brown *v.* United States (37 M. J. 246); Fisher *v.* United States (37 M. J. 245); Hurst *v.* United States (37 M. J. 245); Kibodeaux *v.* United States (37 M. J. 246); Ramos *v.* United States (37 M. J. 246); Riley *v.* United States (37 M. J. 245); Singleton *v.* United States (37 M. J. 244); Weber *v.* United States (37 M. J. 246); Bailey *v.* United States (37 M. J. 249); Bowen *v.* United States (37 M. J. 249); Brooks *v.* United States (37 M. J. 249); Burris *v.* United States (37 M. J. 249); Clark *v.* United States (37 M. J. 249); Day *v.* United States (37 M. J. 249); Fowler *v.* United States (37 M. J. 248); Heath *v.* United States (37 M. J. 249); Hoffer *v.* United States (37 M. J. 249); Leavell *v.* United States (37 M. J. 249); Nimitpattana *v.* United States (37 M. J. 249); Ortega *v.* United States (37 M. J. 249); Pleas *v.* United States (37 M. J. 249); Pursell *v.* United States (37 M. J. 249); Shatek *v.* United States (37 M. J. 248); St. Germaine *v.* United States (37 M. J. 249); Struben *v.* United States (37 M. J. 249); Tindall *v.* United States (37 M. J. 249); Canas *v.* United States (37 M. J. 252); Chocron *v.* United States (37 M. J. 253); Figueroa *v.* United States (37 M. J. 252); Gafford *v.* United States (37 M. J. 252); Gallagher *v.* United States (37 M. J. 253); George *v.* United States (37 M. J. 252); Hamm *v.* United States (37 M. J. 252); Holmes *v.* United States (37

M. J. 252); Johnston *v.* United States (37 M. J. 252); Patton *v.* United States (37 M. J. 252); White *v.* United States (37 M. J. 252); Dail *v.* United States (37 M. J. 255); Moradian *v.* United States (37 M. J. 255); Blathers *v.* United States (37 M. J. 258); Boydson *v.* United States (37 M. J. 259); Conklin *v.* United States (37 M. J. 258); Even *v.* United States (37 M. J. 258); Fitzgerald *v.* United States (37 M. J. 259); Hensley *v.* United States (37 M. J. 258); Hesse *v.* United States (37 M. J. 259); Reynolds *v.* United States (37 M. J. 258); Stevens *v.* United States (37 M. J. 259); Wellman *v.* United States (37 M. J. 258); Thompson *v.* United States (37 M. J. 259); Jones *v.* United States (37 M. J. 263); Pierrie *v.* United States (37 M. J. 266); Bell *v.* United States (37 M. J. 269); Johnson *v.* United States (37 M. J. 269); and Marshall *v.* United States (37 M. J. 260). Ct. Mil. App. Certiorari denied.

No. 92–1711. Gregg *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 260.

No. 92–1861. Curtis *v.* United States; White *v.* United States; Blake *v.* United States; Simpson *v.* United States; and Nichols *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 162 (first case); 36 M. J. 284 (second case); 38 M. J. 166 (third case); 38 M. J. 171 (fourth and fifth cases).

No. 92–9033. Rud *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 235.

No. 93–68. Doucette *v.* United States; Storts *v.* United States; Whitfield *v.* United States; Graham *v.* United States; Hinojosa *v.* United States; Rudolph *v.* United States; Berberena-Sierra *v.* United States; Frenz *v.* United States; Winfield *v.* United States; Young *v.* United States; Gadson *v.* United States; Mockmore *v.* United States; Tripodi *v.* United States; Klinko *v.* United States; Newberry *v.* United States; Williams *v.* United States; Bruce *v.* United States; McMillan *v.* United States; Mesa *v.* United States; Navarro *v.* United States; Habegger *v.* United States; Herzog *v.* United States; Steeg *v.* United States; Colon *v.* United States; Jones *v.* United States; and Rusinskas *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 167 (1st case), 166 (2d case), 167 (3d case), 171 (4th case), 172 (5th and 6th cases), 198 (7th, 8th, 9th, and 10th cases), 210 (11th case), 218 (12th case), 222 (13th case), 224 (14th and 15th cases), 237 (16th case), 167 (17th case), 166 (18th, 19th, and 20th cases), 171 (21st, 22d, and 23d cases), 198 (24th and 25th cases), and 172 (26th case).

No. 93–447. TORO *v.* UNITED STATES; LIPSCOMB *v.* UNITED STATES; COPPOCK *v.* UNITED STATES; HARVEY *v.* UNITED STATES; TETERS *v.* UNITED STATES; PERRY *v.* UNITED STATES; and PROCTOR *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 313 (first case); 38 M. J. 457 (second case); 37 M. J. 145 (third case); 37 M. J. 140 (fourth case); 37 M. J. 370 (fifth case); 37 M. J. 363 (sixth case); 37 M. J. 330 (seventh case).

No. 93–503. LIPS *v.* COMMANDANT, UNITED STATES DISCIPLINARY BARRACKS. C. A. 10th Cir. Certiorari denied. Reported below: 997 F. 2d 808.

No. 93–515. CLARK *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 997 F. 2d 1466.

No. 93–523. DOE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 87.

No. 93–571. UWAEZHOKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 388.

No. 93–577. MAXWELL *v.* FIRST NATIONAL BANK OF MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1009.

No. 93–589. PRO-TECH SECURITY NETWORK *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1538.

No. 93–636. WILKINS ET AL. *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 995 F. 2d 850.

No. 93–643. BESSEMER & LAKE ERIE RAILROAD CO. *v.* WHEELING-PITTSBURGH STEEL CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1144.

No. 93–655. EVANSTON HOSPITAL *v.* HAUCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 540.

No. 93–662. MARSHALL *v.* NELSON ELECTRIC ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 547.

No. 93–671. SANTOPIETRO ET AL. *v.* UNITED STATES; and No. 93–681. VITARELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 17.

No. 93–682. MILLARD PROCESSING SERVICES, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 258.

No. 93–704. BOTTONE ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 17.

No. 93–736. WEBBER *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 446.

No. 93–786. UNITED STATES *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 990 F. 2d 1565.

No. 93–818. BOCKES *v.* FIELDS, INDIVIDUALLY AND AS MEMBER AND CHAIRMAN OF THE BOARD OF SOCIAL SERVICES, GRAYSON COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 999 F. 2d 788.

No. 93–829. INTEL CORP. *v.* ULSI SYSTEM TECHNOLOGY, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 995 F. 2d 1566.

No. 93–833. OPERATION RESCUE ET AL. *v.* WOMEN'S HEALTH CENTER ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 626 So. 2d 664.

No. 93–837. LOCAL 667 (A UNION AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA) *v.* THORNE ET AL. Ct. App. Tenn. Certiorari denied.

No. 93–843. BURGESS *v.* RYAN, ILLINOIS SECRETARY OF STATE, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 180.

No. 93–845. MIKHAIL *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–849. Blair *v.* Graham Correctional Center et al. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 996.

No. 93–851. Blackmon *v.* Wal-Mart Stores, Inc., dba Sam's Wholesale Club. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 443.

No. 93–858. South Carolina *v.* Griffin. Sup. Ct. S. C. Certiorari denied. Reported below: 315 S. C. 285, 433 S. E. 2d 862.

No. 93–859. Eisenbart *v.* Wisconsin et al. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1549.

No. 93–870. Levald, Inc. *v.* City of Palm Desert. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 680.

No. 93–877. Gracey *v.* Day. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 779.

No. 93–881. Haugen et al. *v.* Butler Machinery, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 1442.

No. 93–882. Tilton *v.* Richardson et al. C. A. 10th Cir. Certiorari denied. Reported below: 6 F. 3d 683.

No. 93–887. Royal Thai Government *v.* Belton Industries, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 6 F. 3d 756.

No. 93–889. DeSambourg et al. *v.* Plaquemines Parish Government of Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 621 So. 2d 602.

No. 93–891. Local 18, International Union of Operating Engineers *v.* Shimman. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 651.

No. 93–896. Monga et vir *v.* Glover Landing Condominium Trust et al. C. A. 1st Cir. Certiorari denied. Reported below: 986 F. 2d 1407.

No. 93–897. Concordia College Corp. *v.* W. R. Grace & Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 326.

No. 93-902. SMITH *v.* MALLARD & MINOR ET AL. Ct. App. Ga. Certiorari denied. Reported below: 208 Ga. App. XXVI.

No. 93-920. FENNELL ET UX. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93-921. SULLIVAN *v.* BIELUCH. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 666.

No. 93-924. BRECK *v.* PACIFICA BAY VILLAGE ASSOCIATES, INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93-929. INTERCONTINENTAL BULKTANK CORP. *v.* JORDAN. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 621 So. 2d 1141.

No. 93-943. PERKO *v.* DAVIS, JUSTICE OF THE SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 187 App. Div. 2d 1049, 589 N. Y. S. 2d 387.

No. 93-951. DARULIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 1242.

No. 93-953. PSJ CORP. ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (FULBRIGHT & JAWORSKI ET AL., REAL PARTIES IN INTEREST); SAY & SAY ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (CASTELLANO ET AL., REAL PARTIES IN INTEREST); and SHIEH *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY (CHRISTOPHER ET AL., REAL PARTIES IN INTEREST). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-954. TSACONAS ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 93-976. SOARES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 671.

No. 93-1010. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93-6552. REESE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 870.

No. 93–6559. SWEDZINSKI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 548.

No. 93–6569. SMITH *v.* UNITED STATES; and
No. 93–6581. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93–6583. GONZALEZ, AKA GOANAGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93–6604. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 988.

No. 93–6627. COYNE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 100.

No. 93–6644. RANDALL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 626 So. 2d 1367.

No. 93–6724. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93–6811. ALLEN *v.* NEW YORK LIFE SECURITIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93–6824. PARKER *v.* OREGON STATE BAR. Sup. Ct. Ore. Certiorari denied.

No. 93–6828. HOLSEY *v.* INMATE GRIEVANCE OFFICE. Cir. Ct. Anne Arundel County, Md. Certiorari denied.

No. 93–6831. GANN *v.* REMPEL ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–6840. COOKSTON *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–6841. RADFORD, PERSONAL REPRESENTATIVE OF THE ESTATE OF RADFORD, DECEASED *v.* CHEVRON, U. S. A., INC. C. A. 10th Cir. Certiorari denied. Reported below: 991 F. 2d 806.

No. 93-6849. Johnson *v.* Smith, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 224.

No. 93-6850. Huntley *v.* Allen et al. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 985.

No. 93-6854. Corethers *v.* Atlas Bonding Co. et al. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 232.

No. 93-6856. Latimore *v.* Gilbert. C. A. 6th Cir. Certiorari denied.

No. 93-6858. Rubin *v.* Gomilla et al. C. A. 7th Cir. Certiorari denied.

No. 93-6866. Parker *v.* Shoptaugh. Ct. App. Colo. Certiorari denied.

No. 93-6873. Sullivan *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 926.

No. 93-6874. White *v.* Gregory et al. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 267.

No. 93-6875. Snyder *v.* Frost et al. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93-6887. Stallings *v.* Higgins, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 532.

No. 93-6905. Noel *v.* Delo, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93-6906. Dubyak *v.* Smith et al. C. A. 9th Cir. Certiorari denied.

No. 93-6909. Kowalski *v.* Commission on Judicial Fitness. Sup. Ct. Ore. Certiorari denied.

No. 93-6915. Thomas *v.* Hargett, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 547.

No. 93-6916. Ceszyk *v.* Cuneo et al. C. A. 7th Cir. Certiorari denied. Reported below: 993 F. 2d 1549.

No. 93-6917. Drew *v.* Dwinell et ux. C. A. 5th Cir. Certiorari denied.

No. 93-6921. CARLTON *v.* FASSBENDER. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1214.

No. 93-6922. BURLEY *v.* ULLRICH COPPER, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 216.

No. 93-6924. BRAZILE *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-6930. CASTRO RODRIGUEZ *v.* GODINEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93-6933. DICK *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 93-6936. BARBER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 93-6942. NASH *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 316 Ore. 529, 854 P. 2d 940.

No. 93-6947. MOSKOWITZ *v.* SABOL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93-6949. LEE *v.* RODRIGUEZ, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 93-6953. JOYCE D. *v.* ORANGE COUNTY SOCIAL SERVICES AGENCY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93-6958. JEFFERS *v.* MAZURKIEWICZ, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-6961. PERNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93-6963. JOSEPH *v.* CANNON ET AL. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 609 So. 2d 838.

No. 93-6971. CARDINE *v.* MCANULTY ET AL. C. A. 6th Cir. Certiorari denied.

No. 93-6975. BIRD *v.* THIGPEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93-6977. SCHLEEPER *v.* DELO, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93-6985. KEITH *v.* MARKLEY. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 93-6989. SMITH *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 241 Ill. App. 3d 365, 610 N. E. 2d 91.

No. 93-6992. CORETHERS *v.* CAPOTS ET AL. C. A. 6th Cir. Certiorari denied.

No. 93-6994. BANUELOS *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 124 Idaho 569, 861 P. 2d 1234.

No. 93-7029. RUSSELL *v.* EHRNFELT. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 132, 616 N. E. 2d 237.

No. 93-7040. BUSCH *v.* JEFFES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1488.

No. 93-7065. HARRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93-7086. KENT *v.* POYTHRESS ET AL. Ct. App. Ga. Certiorari denied.

No. 93-7090. PICKENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93-7105. LAPSLEY *v.* UNEMPLOYMENT INSURANCE REVIEW BOARD OF THE INDIANA DEPARTMENT OF EMPLOYMENT AND TRAINING SERVICES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 113.

No. 93-7107. NELSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 254.

No. 93-7112. CONROD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 93-7113. FINCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93–7114. GARY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93–7115. CORREA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 999.

No. 93–7121. FLANAGAN *v.* BRENNAN, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 779.

No. 93–7125. ALI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–7127. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–7129. BARBER *v.* GREEN ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–7132. DUPUY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93–7133. BARKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 629.

No. 93–7134. GOMEZ-SALAZAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 779.

No. 93–7138. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93–7141. BILLUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 994 F. 2d 1562.

No. 93–7142. DANIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–7144. GRAFFT *v.* MAXWELL ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 259 Mont. 533, 861 P. 2d 934.

No. 93–7147. IGNAGNI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93–7150. CARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93–7153. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 258.

No. 93–7154. AVILA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 813.

No. 93–7156. OLMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93–7163. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–7164. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93–7166. GALLARDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93–7168. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 999.

No. 93–7169. RODRIQUEZ-PEGUERO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93–7171. LOCKHART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 1 F. 3d 1167.

No. 93–7189. MALDONADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 978 F. 2d 705.

No. 93–7204. HERROLD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93–7268. JERREL *v.* ALASKA. Ct. App. Alaska. Certiorari denied. Reported below: 851 P. 2d 1365.

No. 93–7284. BROWN *v.* PIERCE. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 590.

No. 92–8861. PICKENS *v.* OKLAHOMA (two cases). Ct. Crim. App. Okla. Certiorari denied. JUSTICE BLACKMUN would grant certiorari limited to Question 1 presented by the petition. Reported below: 850 P. 2d 328 (second case).

No. 93–834. SHANDON INC. ET AL. *v.* MILES LABORATORIES, INC., ET AL. C. A. Fed. Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 997 F. 2d 870.

No. 93-862. BELLSOUTH ADVERTISING & PUBLISHING CORP. *v.* DONNELLEY INFORMATION PUBLISHING, INC., ET AL. C. A. 11th Cir. Motions of Ameritech Publishing, Inc., et al., West Publishing Co., Martindale-Hubbell, Inc., United States Telephone Association, and Sprint Publishing & Advertising, Inc., for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 999 F. 2d 1436.

No. 93-873. UNIVERSITY OF TENNESSEE *v.* FAULKNER. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 627 So. 2d 362.

Rehearing Denied

No. 93-532. REYER *v.* TODD ET AL., *ante,* p. 992;

No. 93-540. SUNDWALL *v.* GENERAL BUILDING SUPPLY CO., *ante,* p. 993;

No. 93-579. HEMMERLE, DBA HEMMERLE CONSTRUCTION CO., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SUNRISE SAVINGS & LOAN ASSN., *ante,* p. 978;

No. 93-588. KREN *v.* CITY OF SPRINGFIELD, ILLINOIS, *ante,* p. 1011;

No. 93-5739. STOHLER *v.* HARGETT, WARDEN, ET AL., *ante,* p. 1013;

No. 93-6234. BOROS *v.* BAXLEY ET AL., *ante,* p. 997;

No. 93-6268. GOLDBERG *v.* CLEVELAND CLINIC, FLORIDA, *ante,* p. 998;

No. 93-6334. WASKO *v.* ESTELLE, WARDEN, *ante,* p. 1015;

No. 93-6335. ABATE *v.* AVENENTI ET AL., *ante,* p. 999;

No. 93-6414. WILLIAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 1027; and

No. 93-6658. WILLIAMS *v.* UNITED STATES, *ante,* p. 1019. Petitions for rehearing denied.

No. 92-1806. MEYER *v.* LELSZ ET AL., *ante,* pp. 906 and 1004. Motion for leave to file second petition for rehearing denied.

No. 93-6012. VEASEY *v.* RYAN, WARDEN, ET AL., *ante,* p. 954. Motion for leave to file petition for rehearing denied.

JANUARY 25, 1994

Dismissal Under Rule 46

No. 93–899. POOLE *v.* CITY OF KILLEEN ET AL. C. A. 5th Cir. Certiorari dismissed as to John Earl Poole under this Court's Rule 46. Reported below: 999 F. 2d 1580.

FEBRUARY 1, 1994

Certiorari Denied

No. 93–7689 (A–631). BARNARD *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN would grant the application for stay of execution. Reported below: 13 F. 3d 871.

No. 93–7691 (A–632). BARNARD *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

No. 93–7692 (A–633). BARNARD *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE BLACKMUN would grant the application for stay of execution.

FEBRUARY 3, 1994

Miscellaneous Order

No. A–621. BELLSOUTH TELECOMMUNICATIONS, INC., DBA SOUTH CENTRAL BELL TELEPHONE CO. *v.* STINNETT ET AL. D. C. E. D. Tenn. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

FEBRUARY 8, 1994

Dismissal Under Rule 46

No. 93–325. FINCH *v.* CHAPMAN ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 991 F. 2d 799.

FEBRUARY 22, 1994

Certiorari Granted—Vacated and Remanded

No. 93-7006. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed January 26, 1994.

Miscellaneous Orders

No. ———. RUIZ *v.* UNITED STATES. Motion of petitioner for leave to file petition for writ of certiorari under seal denied without prejudice to petitioner filing a new motion accompanied by a redacted petition for writ of certiorari.

No. ———. WEBB *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION;
No. ———. FLEEHER *v.* TOBIN, DIRECTOR, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; and
No. ———. THOMPSON ET AL. *v.* MURPHY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. ———. DINGLE *v.* UNITED STATES. Motion of petitioner for leave to file petition for writ of certiorari under seal and with a public copy with confidential material deleted denied.

No. A-450. PREWITT *v.* MOORE ET AL. Application for injunction, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A-546. BAIN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Application for stay, addressed to JUSTICE BLACKMUN and referred to the Court, denied.

No. A-681. FIRST INTERSTATE BANK OF DENVER *v.* DUFFIELD. C. A. 10th Cir. Application for stay of mandate, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. D-1323. IN RE DISBARMENT OF STEFFEN. Albert Joseph Steffen, of Cincinnati, Ohio, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the

Bar of this Court. The rule to show cause, heretofore issued on November 8, 1993 [*ante*, p. 961], is hereby discharged.

No. D-1339. In re Disbarment of Reef. Norman S. Reef, of Portland, Me., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 10, 1994 [*ante*, p. 1035], is hereby discharged.

No. D-1346. In re Disbarment of Arditti. Victor R. Arditti, of El Paso, Tex., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 10, 1994 [*ante*, p. 1036], is hereby discharged.

No. D-1350. In re Disbarment of Lilly. David Greene Lilly, of Los Angeles, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 10, 1994 [*ante*, p. 1036], is hereby discharged.

No. D-1356. In re Disbarment of Seeman. It is ordered that Bernard M. Seeman, of Lake Success, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1357. In re Disbarment of Carpenter. It is ordered that James P. Carpenter III, of Chillicothe, Ohio, be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1358. In re Disbarment of Henderson. It is ordered that Richard Stanley Henderson, of San Diego, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1359. In re Disbarment of Steinhorn. It is ordered that Neil Warren Steinhorn, of Baltimore, Md., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1360. In re Disbarment of Provda. It is ordered that Bruce Provda, of Floral Park, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1361. In re Disbarment of Krasner. It is ordered that Barry J. Krasner, of Manhattan Beach, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1362. In re Disbarment of Sneed. It is ordered that Benjamin Sneed, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1363. In re Disbarment of Erdheim. It is ordered that Michael F. Erdheim, of New York, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1364. In re Disbarment of Herring. It is ordered that Bruce A. Herring, of Placentia, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1365. In re Disbarment of Micelli. It is ordered that Nicholas Angelo Micelli, of Los Angeles, Cal., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1366. In re Disbarment of Stevens. It is ordered that A. Karl Stevens, Jr., of Tampa, Fla., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1367. In re Disbarment of Londoff. It is ordered that William M. Londoff, of St. Ann, Mo., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1368. In re Disbarment of Scott. It is ordered that Roger Scott, of Syracuse, N. Y., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1369. In re Disbarment of Woodard. It is ordered that Jesse Lincoln Woodard, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1370. In re Disbarment of Morris. It is ordered that Thomas John Morris, of Fairfax, Va., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 65, Orig. Texas *v.* New Mexico. Motion of the River Master for award of fees and expenses granted, and the River Master is awarded a total of $444.60 for the period October 1 through December 31, 1993, to be paid equally by the parties. [For earlier order herein, see, *e. g., ante,* p. 987.]

No. 109, Orig. Oklahoma et al. *v.* New Mexico. Motion of the Special Master for compensation and reimbursement of expenses and to be discharged as Special Master granted, and the Special Master is awarded a total of $740.71 for the period October 1 through December 15, 1993, to be paid one-third by each party. The Special Master is hereby discharged with the thanks of the Court. [For earlier decision herein, see, *e. g., ante,* p. 126.]

No. 111, Orig. Delaware et al. *v.* New York. Motion of Delaware to dismiss the complaint against New York without prejudice referred to the Special Master. [For earlier order herein, see, *e. g., ante,* p. 1022.]

No. 92–1384. Barclays Bank PLC *v.* Franchise Tax Board of California; and

No. 92–1839. Colgate-Palmolive Co. *v.* Franchise Tax Board of California. Ct. App. Cal., 3d App. Dist. [Certiorari granted, *ante,* p. 942.] Motion of California Legislature for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Government of the United Kingdom for leave to participate in oral argument as *amicus curiae,* for divided argument, and for additional time for oral argument denied.

No. 92–1956. Consolidated Rail Corporation *v.* Gottshall; and Consolidated Rail Corporation *v.* Carlisle. C. A. 3d Cir. [Certiorari granted, *ante,* p. 912.] Motions of respondents James E. Gottshall and Alan Carlisle for divided argument granted.

No. 93–356. MCI Telecommunications Corp. *v.* American Telephone & Telegraph Co.; and

No. 93–521. United States et al. *v.* American Telephone & Telegraph Co. et al. C. A. D. C. Cir. [Certiorari granted, *ante,* p. 989.] Motion of the Solicitor General for divided argument granted. Justice O'Connor took no part in the consideration or decision of this motion.

No. 93–377. Department of Taxation and Finance of New York et al. *v.* Milhelm Attea & Bros., Inc., et al. Ct. App. N. Y. [Certiorari granted, *ante,* p. 943.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–517. Board of Education of Kiryas Joel Village School District *v.* Grumet et al.;

No. 93–527. Board of Education of Monroe-Woodbury Central School District *v.* Grumet et al.; and

No. 93–539. Attorney General of New York *v.* Grumet et al. Ct. App. N. Y. [Certiorari granted, *ante,* p. 989.] Motion of petitioner Board of Education of the Kiryas Joel Village School District for divided argument granted.

No. 93–1286. American Airlines, Inc. *v.* Wolens et al. Sup. Ct. Ill. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 93–7034. In re Anderson; and

No. 93–7556. In re Miller. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until March 15, 1994, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33 of the Rules of this Court.

No. 93–7333. In re Usher;
No. 93–7344. In re Colbert;
No. 93–7365. In re Michalek;
No. 93–7371. In re Rice;
No. 93–7393. In re Morrow;
No. 93–7444. In re Flowers;
No. 93–7538. In re Haynes; and
No. 93–7607. In re Gay. Petitions for writs of habeas corpus denied.

No. 93–7101. In re Dancy;
No. 93–7162. In re Fairley;
No. 93–7186. In re Muhammed;
No. 93–7351. In re Burke; and
No. 93–7431. In re O'Connor. Petitions for writs of mandamus denied.

No. 93–6508. In re Gibson; and
No. 93–7102. In re Steel. Petitions for writs of mandamus and/or prohibition denied.

No. 93–6993. In re Johnson. Petition for writ of prohibition denied.

Certiorari Granted

No. 93–981. United States *v.* Shabani. C. A. 9th Cir. Certiorari granted. Reported below: 993 F. 2d 1419.

No. 93–986. McIntyre *v.* Ohio Elections Commission. Sup. Ct. Ohio. Certiorari granted. Reported below: 67 Ohio St. 3d 391, 618 N. E. 2d 152.

No. 93–762. Jerome B. Grubart, Inc. *v.* Great Lakes Dredge & Dock Co. et al.; and

No. 93–1094. City of Chicago *v.* Great Lakes Dredge & Dock Co. et al. C. A. 7th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 3 F. 3d 225.

No. 93–908. REICH *v.* COLLINS, REVENUE COMMISSIONER OF GEORGIA, ET AL. Sup. Ct. Ga. Certiorari granted limited to Question 1 presented by the petition. Reported below: 263 Ga. 602, 437 S. E. 2d 320.

No. 93–6892. TOME *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 3 F. 3d 342.

Certiorari Denied

No. 93–148. OLIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 989 F. 2d 501.

No. 93–471. SPAWN *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 830.

No. 93–538. CITY OF HUNTINGTON, WEST VIRGINIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 999 F. 2d 71.

No. 93–599. KRC *v.* UNITED STATES INFORMATION AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 989 F. 2d 1211.

No. 93–607. WILSON *v.* UNITED STATES; and
No. 93–6639. MEDINA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 573.

No. 93–622. BELLECOURT *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 427.

No. 93–659. MILLER *v.* LA ROSA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 991 F. 2d 583.

No. 93–678. DICKERSON *v.* DEPARTMENT OF JUSTICE. C. A. 6th Cir. Certiorari denied. Reported below: 992 F. 2d 1426.

No. 93–687. PUPPOLO FAMILY TRUST ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 237.

No. 93–693. CITY OF BAYONNE *v.* TOWN OF SEACAUCUS ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 133 N. J. 482, 628 A. 2d 288.

No. 93–695. OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF COLUMBIA GAS TRANSMISSION CORP. *v.* COLUMBIA GAS TRANSMISSION CORP. ET AL.;

No. 93–876. OFFICIAL COMMITTEE OF CUSTOMERS OF COLUMBIA GAS TRANSMISSION CORP. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF COLUMBIA GAS TRANSMISSION CORP.;

No. 93–879. PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF COLUMBIA GAS TRANSMISSION CORP.; and

No. 93–904. CITIES OF CHARLOTTESVILLE AND RICHMOND, VIRGINIA *v.* OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF COLUMBIA GAS TRANSMISSION CORP. C. A. 3d Cir. Certiorari denied. Reported below: 997 F. 2d 1039.

No. 93–701. CIRCUIT COURT OF THE FIRST CIRCUIT ET AL. *v.* DOW. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 922.

No. 93–707. CONDO *v.* SYSCO CORP. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 599.

No. 93–712. SANCHEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 1143 and 3 F. 3d 366.

No. 93–716. OLIN CORP. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 986 F. 2d 1295.

No. 93–719. FIGGIE INTERNATIONAL, INC. *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 994 F. 2d 595.

No. 93–733. POZSGAI ET UX. *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 999 F. 2d 719.

No. 93–756. MISSION OAKS MOBILE HOME PARK *v.* CITY OF HOLLISTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 989 F. 2d 359.

No. 93–759. HESTER ET AL. *v.* NATIONSBANK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 990.

No. 93–767. Fortner *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 349.

No. 93–771. Hunt *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 344.

No. 93–793. Bent *v.* Massachusetts General Hospital et al. C. A. 1st Cir. Certiorari denied. Reported below: 998 F. 2d 1001.

No. 93–796. White *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 1 F. 3d 13.

No. 93–803. Northwest Airlines, Inc. *v.* West; and

No. 93–901. West *v.* Northwest Airlines, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 148.

No. 93–804. Lindsey, Stephenson & Lindsey *v.* Federal Deposit Insurance Corporation. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 626.

No. 93–816. Herring *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 236.

No. 93–822. Banco Cooperativo de Puerto Rico *v.* Federal Deposit Insurance Corporation. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 493.

No. 93–825. Greater Rockford Energy & Technology Corp. et al. *v.* Shell Oil Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 391.

No. 93–831. Rennie et al. *v.* Dalton, Secretary of the Navy. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 1100.

No. 93–832. St. Elizabeth Medical Center *v.* Browning et al. Sup. Ct. Ohio. Certiorari denied. Reported below: 66 Ohio St. 3d 544, 613 N. E. 2d 993.

No. 93–841. City of New York et al. *v.* Hertz Corp.; and

No. 93–1005. Hertz Corp. *v.* City of New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 1 F. 3d 121.

No. 93–852. Mershon et al. *v.* Beasley et al. C. A. 8th Cir. Certiorari denied. Reported below: 994 F. 2d 449.

No. 93-854. HARMON *v.* NORTHERN INSURANCE COMPANY OF NEW YORK ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 621 So. 2d 938.

No. 93-855. BANUELOS ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 534.

No. 93-857. JOSSI *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 883.

No. 93-861. CHEEK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 1057.

No. 93-863. KREGOS, DBA AMERICAN SPORTS WIRE *v.* ASSOCIATED PRESS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 3 F. 3d 656.

No. 93-865. BLUE CROSS & BLUE SHIELD OF ALABAMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1542.

No. 93-874. GREWE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 299.

No. 93-893. LEIKER *v.* UNITED STATES; ACTON *v.* UNITED STATES; JACKSON *v.* UNITED STATES; JOHNSON *v.* UNITED STATES; MAXWELL *v.* UNITED STATES; and FRENCH *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 418 (first case); 38 M. J. 330 (second case); 38 M. J. 106 (third case); 38 M. J. 88 (fourth case); 38 M. J. 148 (fifth case); 38 M. J. 420 (sixth case).

No. 93-894. MCLAREN *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 112.

No. 93-895. PLUMMER *v.* SPRINGFIELD TERMINAL RAILWAY CO. C. A. 1st Cir. Certiorari denied. Reported below: 5 F. 3d 1.

No. 93-898. GROSNICK *v.* EMBRIANO. C. A. 1st Cir. Certiorari denied. Reported below: 999 F. 2d 590.

No. 93-903. ANSCHUTZ CORP. *v.* AMOCO ROCMOUNT CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 909.

No. 93–906. SCHULMERICH CARILLONS, INC. *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied. Reported below: 154 Pa. Commw. 343, 623 A. 2d 921.

No. 93–907. SHELLING *v.* SOUTHERN RAILWAY CO. Ct. App. Ga. Certiorari denied. Reported below: 207 Ga. App. XXX.

No. 93–910. BONNY ET AL. *v.* SOCIETY OF LLOYD'S ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 156.

No. 93–911. PENNSYLVANIA *v.* FOUNTAIN; and PENNSYLVANIA *v.* THOMAS. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 296, 621 A. 2d 124 (first case); 430 Pa. Super. 651, 630 A. 2d 465 (second case).

No. 93–912. PRENTICE ET UX. *v.* TITLE INSURANCE COMPANY OF MINNESOTA ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 176 Wis. 2d 714, 500 N. W. 2d 658.

No. 93–913. LOVETT, TRUSTEE OF THE BANKRUPTCY ESTATE OF JOHN PETERSON MOTORS, INC. *v.* GENERAL MOTORS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 998 F. 2d 575.

No. 93–914. CUPIT ET AL. *v.* MCCLANAHAN CONTRACTORS, INC., FKA AWI DRILLING & WORKOVER, INC. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 346.

No. 93–916. THOMAS NELSON, INC., ET AL. *v.* HARPER HOUSE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 536.

No. 93–919. WHITMORE *v.* BOARD OF EDUCATION OF DEKALB COMMUNITY SCHOOL DISTRICT NO. 428 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 1245.

No. 93–923. ANDERSON *v.* DOUGLAS COUNTY, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 574.

No. 93–926. LEDWITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–930. LUMLEY *v.* HOGSETT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 546.

No. 93–931. PRUITT ET AL. *v.* HOWARD COUNTY SHERIFF'S DEPARTMENT ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 96 Md. App. 60, 623 A. 2d 696.

No. 93–933. MARITIME OVERSEAS CORP. ET AL. *v.* HAE WOO YOUN. Sup. Ct. La. Certiorari denied. Reported below: 623 So. 2d 1257.

No. 93–934. LANDRO *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 504 N. W. 2d 741.

No. 93–936. NORTH STAR STEEL CO., INC. *v.* UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 39.

No. 93–937. ANDERSON *v.* STEERS, SULLIVAN, MCNAMAR & ROGERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 495.

No. 93–940. PATEL *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 856 S. W. 2d 486.

No. 93–942. SOCIETY BANK & TRUST *v.* MCGRAW, TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 5 F. 3d 150.

No. 93–944. WAHLSTROM ET AL. *v.* KAWASAKI HEAVY INDUSTRIES, INC., LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 1084.

No. 93–949. KIDD *v.* DEPARTMENT OF THE INTERIOR. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1502.

No. 93–956. DAVIS, GILLENWATER & LYNCH ET AL. *v.* TURNER, TRUSTEE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 4 F. 3d 1556.

No. 93–957. RAMASWAMI *v.* TEXAS DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 436.

No. 93–958. WILLIAMS *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 405.

No. 93–961. COLEMAN *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–962. Pope *v.* University of Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 121 Wash. 2d 479, 852 P. 2d 1055.

No. 93–965. Levesque *v.* Levesque. Sup. Ct. N. H. Certiorari denied. Reported below: 137 N. H. 638, 631 A. 2d 925.

No. 93–969. Bergman *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 3 F. 3d 432.

No. 93–970. DiCicco *v.* Tremblay. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 628 A. 2d 141.

No. 93–974. Central States, Southeast and Southwest Areas Pension Fund et al. *v.* NAVCO et al. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 167.

No. 93–975. Fuller et al. *v.* FMC Corp. et al. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 255.

No. 93–977. Gonzales *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 456.

No. 93–979. Lucero *v.* New Mexico. Ct. App. N. M. Certiorari denied.

No. 93–980. Andrisani *v.* Superior Court of California, Appellate Department, County of Los Angeles, et al. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 881.

No. 93–985. Bennett *v.* Independence Blue Cross et al. C. A. 3d Cir. Certiorari denied.

No. 93–988. Burke *v.* Deere & Co., aka John Deere Co. C. A. 8th Cir. Certiorari denied. Reported below: 6 F. 3d 497.

No. 93–989. Childers *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 313 S. C. 124, 437 S. E. 2d 75.

No. 93–990. Stokes *v.* Hatch et al. Sup. Ct. Ala. Certiorari denied. Reported below: 622 So. 2d 939.

No. 93–991. Dunbar *v.* Department of the Navy. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1502.

No. 93–992. Abuan et al. *v.* General Electric Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 3 F. 3d 329.

No. 93–993. Marina Ventures Internationale, Ltd., et al. *v.* Polythane Systems, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 993 F. 2d 1201.

No. 93–994. Continental Potash Inc. et al. *v.* Freeport-McMoRan Inc. et al. Sup. Ct. N. M. Certiorari denied. Reported below: 115 N. M. 690, 858 P. 2d 66.

No. 93–997. Kuri *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 846 S. W. 2d 459.

No. 93–998. Lesher *v.* Geauga Department of Human Services. Ct. App. Ohio, Geauga County. Certiorari denied.

No. 93–999. Federal Election Commission *v.* Political Contributions Data, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 995 F. 2d 383.

No. 93–1007. Rocheux International, Inc., et al. *v.* Fulbright & Jaworski. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–1008. Say & Say et al. *v.* Castellano et al.; and Shieh et al. *v.* Christopher et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–1009. Say & Say et al. *v.* Superior Court of California, Orange County (Lindquist et al., Real Parties in Interest); and Say & Say et al. *v.* Superior Court of California, Orange County (Miller et al., Real Parties in Interest). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 93–1011. NYSA–ILA Pension Trust Fund et al. *v.* Garuda Indonesia et al. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 35.

No. 93–1017. Pilditch *v.* Gool et al. C. A. 7th Cir. Certiorari denied. Reported below: 3 F. 3d 1113.

No. 93–1021. Evans *v.* United Arab Shipping Co. S. A. G. et al. C. A. 3d Cir. Certiorari denied. Reported below: 4 F. 3d 207.

No. 93–1026. MOORE *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 569 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 989 F. 2d 1534.

No. 93–1027. HORNING *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 93–1028. PLAN COMMITTEE OF BANK BUILDING & EQUIPMENT CORPORATION OF AMERICA, IN LIQUIDATION *v.* RELIANCE INSURANCE COMPANY OF ILLINOIS. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 532.

No. 93–1031. D'ALBISSIN *v.* SHUTTS & BOWEN. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93–1034. GORE *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 546.

No. 93–1037. BELGARD-KRAUSE ET AL. *v.* UNITED AIRLINES. Ct. App. Colo. Certiorari denied. Reported below: 857 P. 2d 467.

No. 93–1040. EMPRESA NACIONAL SIDERURGICA, S. A. *v.* YOUNG. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 617 So. 2d 517.

No. 93–1042. DESALVO ET AL. *v.* LOUISIANA ET AL. Sup. Ct. La. Certiorari denied. Reported below: 624 So. 2d 897.

No. 93–1045. JEWISH MEMORIAL HOSPITAL ET AL. *v.* MASSACHUSETTS ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 416 Mass. 132, 617 N. E. 2d 598.

No. 93–1046. WILSON *v.* HARLOW ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 860 P. 2d 793.

No. 93–1048. COOPER ET AL. *v.* ARMSTRONG RUBBER CO. C. A. 5th Cir. Certiorari denied. Reported below: 989 F. 2d 822.

No. 93–1050. E. F. ETIE SHEET METAL CO. *v.* SHEET METAL WORKERS LOCAL UNION No. 54, AFL–CIO, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 1464.

No. 93–1053. SCHWARTZ ET AL. *v.* WORRALL PUBLICATIONS, INC., ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93–1059. Marsh *v.* Penrod Drilling Corp. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 619 So. 2d 1124.

No. 93–1060. Krynicki *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 1153.

No. 93–1064. Moore *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 243 Ill. App. 3d 583, 611 N. E. 2d 1246.

No. 93–1065. Hartbarger *v.* Frank Paxton Co. Sup. Ct. N. M. Certiorari denied. Reported below: 115 N. M. 665, 857 P. 2d 776.

No. 93–1067. TV News Clips of Atlanta, Inc., et al. *v.* Georgia Television Co., dba WSB–TV. C. A. 11th Cir. Certiorari denied. Reported below: 983 F. 2d 236.

No. 93–1069. Katz *v.* Lear Siegler, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1502.

No. 93–1072. DeLong et al. *v.* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) et al. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 993.

No. 93–1075. Bonapfel, Trustee for the Bankruptcy Estate of Carpet Center Leasing Co., Inc. *v.* Nalley Motor Trucks, a Division of Nalley Chevrolet, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 991 F. 2d 682.

No. 93–1076. Wright, Administrator of the Estate of Wright, Deceased *v.* Crawford Long Hospital of Emory University et al. Ct. App. Ga. Certiorari denied. Reported below: 205 Ga. App. 653, 423 S. E. 2d 12.

No. 93–1077. Kline *v.* Atchison, Topeka & Santa Fe Railway Co. Ct. App. Kan. Certiorari denied. Reported below: 18 Kan. App. 2d xl, 856 P. 2d 193.

No. 93–1080. Doctor's Associates, Inc. *v.* Cox et al. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 245 Ill. App. 3d 186, 613 N. E. 2d 1306.

No. 93–1082. Morrison et al. *v.* Mobil Oil Corp. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 184.

No. 93–1084. DiMicco *v.* City of New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 221.

No. 93–1089. Kernan et al. *v.* Tanaka, Administrative Director of the Courts of Hawaii. Sup. Ct. Haw. Certiorari denied. Reported below: 75 Haw. 1, 856 P. 2d 1207.

No. 93–1093. Murr *v.* United States;
No. 93–6682. Rojas *v.* United States;
No. 93–6725. Whited *v.* United States;
No. 93–6777. Huckelby *v.* United States; and
No. 93–7347. Phibbs *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 1053.

No. 93–1096. Hutsell *v.* Sayre. C. A. 6th Cir. Certiorari denied. Reported below: 5 F. 3d 996.

No. 93–1100. Bradley *v.* University of Texas, M. D. Anderson Cancer Center, et al. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 922.

No. 93–1104. Nordell International Resources, Ltd. *v.* Triton Indonesia, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 544.

No. 93–1139. Hernandez *v.* Superintendent, Fredericksburg Rappahanock Joint Security Center. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 818.

No. 93–1210. LePrince *v.* Board of Trustees, Teachers' Pension and Annuity Fund. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 267 N. J. Super. 270, 631 A. 2d 545.

No. 93–6046. Thompson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 990 F. 2d 625.

No. 93–6248. Richardson *v.* Gramley, Warden, et al. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 463.

No. 93–6261. McManus et al. *v.* Housing Authority of the City of Englewood et al. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1489.

No. 93–6305. Karas et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1011.

No. 93–6388. DeMarco *v.* United States;
No. 93–6466. Boisoneau *v.* United States; and
No. 93–6645. Innamorati *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 996 F. 2d 456.

No. 93–6460. Williams *v.* Lord, Superintendent, Bedford Hills Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 996 F. 2d 1481.

No. 93–6462. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 996 F. 2d 1213.

No. 93–6463. Tillman *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 990 F. 2d 1267.

No. 93–6468. Ballard *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 93–6469. Commito *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1220.

No. 93–6486. McDaniel *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93–6534. Patterson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 996 F. 2d 305.

No. 93–6572. Lujan *v.* Thomas, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1031.

No. 93–6573. James, aka Faust *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1554.

No. 93–6589. Hana *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 443 Mich. 202, 504 N. W. 2d 166.

No. 93–6607. Ruth *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 987 F. 2d 774.

No. 93–6625. Hien Hai Hoac *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1099.

No. 93–6663. Stein *v.* United States et al. C. A. 9th Cir. Certiorari denied.

No. 93–6668. Kendall *v.* O'Leary, Secretary of Energy, et al. C. A. 10th Cir. Certiorari denied. Reported below: 998 F. 2d 848.

No. 93–6672. CURE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1136.

No. 93–6676. STEWART *v.* MCGINNIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1031.

No. 93–6677. SOWELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 249.

No. 93–6683. MCNEIL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 436.

No. 93–6687. PARAMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1212.

No. 93–6701. JACOB II, AKA MCCLENIC *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1233.

No. 93–6712. JOHNSON *v.* ARMITAGE ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–6728. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 405.

No. 93–6743. MAXEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 995.

No. 93–6796. DORTCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1056.

No. 93–6814. SCHRADER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–6820. MOSES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 995 F. 2d 1067.

No. 93–6826. GATHWRIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 123.

No. 93–6836. WRIGHT *v.* RUNYON, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 214.

No. 93–6853. DREW *v.* INTERNAL REVENUE SERVICE. C. A. 5th Cir. Certiorari denied.

No. 93-6865. PEREZ *v.* UNITED STATES; and
No. 93-6897. HUBBARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93-6881. ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 990.

No. 93-6882. BAILEY *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 93-6889. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1235.

No. 93-6891. BACHMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93-6899. RUIZ MEJIA *v.* UNITED STATES; and
No. 93-7229. BAUTISTA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 988.

No. 93-6912. GALTIERI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 999 F. 2d 537.

No. 93-6946. LIGHTLE ET UX. *v.* FARMERS STATE BANK. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 997.

No. 93-6957. BARNETT ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 545.

No. 93-6968. WATROBA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 541.

No. 93-6982. TODD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 991.

No. 93-6987. STEEN *v.* CENTRAL QUALITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1547.

No. 93-6988. WILKERSON *v.* KAISER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 1 F. 3d 1250.

No. 93-6991. JEFFERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93-7001. KLUTNICK *v.* GIGANTI. C. A. 7th Cir. Certiorari denied. Reported below: 996 F. 2d 1219.

No. 93-7004. LONG *v.* FAUVER, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1489.

No. 93-7014. STEEN *v.* DETROIT POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1217.

No. 93-7015. DE VONE *v.* BATCHELOR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 F. 3d 1232.

No. 93-7016. BREWER ET AL. *v.* WILKINSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 816.

No. 93-7018. NOTTINGHAM *v.* UNITED STATES;
No. 93-7214. CARROLL *v.* UNITED STATES; and
No. 93-7215. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 4 F. 3d 904.

No. 93-7020. KATSCHOR *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 108.

No. 93-7024. ORTIZ *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 538.

No. 93-7030. ROBINSON *v.* SCHWEIER. C. A. 7th Cir. Certiorari denied.

No. 93-7033. SCHWARZ *v.* CHURCH OF SCIENTOLOGY. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 117.

No. 93-7035. ANDERSON *v.* BUCHANAN ET AL. C. A. D. C. Cir. Certiorari denied.

No. 93-7036. DOVE *v.* WATERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1536.

No. 93-7038. OSBORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93-7041. CARRANZA *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93-7043. MASON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 532.

No. 93–7044. PEREIRA-POSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 999.

No. 93–7045. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 999 F. 2d 539.

No. 93–7050. KIRKENDALL *v.* GRAMBLING & MOUNCE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 989.

No. 93–7059. WOODROME *v.* GROOSE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 93–7060. WICKLIFFE *v.* FARLEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–7061. HOOPER *v.* MORGAN COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–7062. HERMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 552.

No. 93–7068. FREEMAN *v.* ERICKSON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 675.

No. 93–7069. WALTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 240 Ill. App. 3d 49, 608 N. E. 2d 59.

No. 93–7071. STOLTZFUS *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS. C. A. 3d Cir. Certiorari denied.

No. 93–7072. DEAN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 95 Md. App. 728.

No. 93–7073. CORETHERS *v.* KMIECIK ET AL. C. A. 6th Cir. Certiorari denied.

No. 93–7074. BEACHEM *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 984.

No. 93–7076. GRADY *v.* MIAMI HERALD PUBLISHING CO. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 624 So. 2d 266.

No. 93–7077. HENNING *v.* JACOBS, CHAIRMAN, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-7078. KIMBLE *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93-7080. ANOLIK *v.* SUNRISE BANK OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 119.

No. 93-7087. ADAMS *v.* KERR, DEPUTY WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 46.

No. 93-7103. GONZALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 72.

No. 93-7104. BLOUNT *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 93-7106. OATESS *v.* FLORIDA ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-7109. CHRISTOPHER *v.* WADE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 531.

No. 93-7110. CARTER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93-7111. BERNARD *v.* CITY OF SANTA MONICA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-7116. DANIELS *v.* ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1499.

No. 93-7118. WEST *v.* ZENON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 544.

No. 93-7122. GRAHAM *v.* KAESTNER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 818.

No. 93-7123. GREEN *v.* GENERAL MOTORS ACCEPTANCE CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-7124. CORBIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93-7128. BROWN *v.* DOE, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 1236.

No. 93–7130. THOMAS *v.* COWLEY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93–7131. SNYDER *v.* SUMNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 93–7135. DUKES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 194 App. Div. 2d 923, 599 N. Y. S. 2d 188.

No. 93–7137. CALDWELL *v.* BRENNEN, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–7140. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–7149. HAYWOOD *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 93–7151. AARON *v.* UNITED STATES; and
No. 93–7316. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1497.

No. 93–7157. MABERRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93–7160. MCINTYRE *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1225.

No. 93–7165. HELTON *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 18.

No. 93–7170. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 404.

No. 93–7172. WARNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 1378.

No. 93–7173. SANDERS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 430 Pa. Super. 650, 630 A. 2d 464.

No. 93–7176. HARPER *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 543.

No. 93–7178. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 993.

No. 93–7179. KELLER *v.* DOMOVICH, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–7180. FIELDS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–7181. RUSSEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93–7183. MU'MIN *v.* THOMPSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 1149.

No. 93–7184. MORRIS *v.* CHRISTIAN HOSPITAL. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93–7185. ROBINSON *v.* WELBORN ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–7187. PORTER *v.* MICHAEL REESE HOSPITAL AND MEDICAL CENTER. C. A. 7th Cir. Certiorari denied.

No. 93–7188. RICHMOND *v.* WATERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 986.

No. 93–7191. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 206.

No. 93–7192. WHITFIELD *v.* MITCHELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 438.

No. 93–7193. THAKKAR *v.* DEBEVOISE, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied.

No. 93–7194. TAPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–7195. WARREN *v.* CITY OF GRAND RAPIDS. C. A. 6th Cir. Certiorari denied. Reported below: 993 F. 2d 1548.

No. 93–7196. SLOAN *v.* ALAMEDA COUNTY SOCIAL SERVICES AGENCY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93-7197. STANLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1262 and 1265.

No. 93-7199. WATSON *v.* LECUREUX ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 215.

No. 93-7202. DYKES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 93-7203. HOLMES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 196 App. Div. 2d 555, 601 N. Y. S. 2d 145.

No. 93-7205. KEMP *v.* CHRYSLER FIRST MORTGAGE. Ct. App. D. C. Certiorari denied.

No. 93-7206. HOLMES *v.* LYNAUGH, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93-7207. GUERRERO *v.* DAVIDSON, SHERIFF, DESCHUTES COUNTY. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 26.

No. 93-7208. LIGHTFOOT *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 93-7209. RANKIN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 620 So. 2d 1028.

No. 93-7210. MALDONADO *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 812.

No. 93-7211. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 541.

No. 93-7212. BOWLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 226.

No. 93-7216. PERALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93-7220. STRICKLAND *v.* OWEN ET AL. Ct. App. Ga. Certiorari denied. Reported below: 208 Ga. App. 328, 430 S. E. 2d 626.

No. 93–7221. WOLFE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–7222. ZAMORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 330.

No. 93–7223. SCHOKA *v.* BURNS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–7224. THOMAS *v.* NATIONAL UNION FIRE INSURANCE CO. ET AL. Sup. Ct. Tenn. Certiorari denied.

No. 93–7225. GAMBLE *v.* EAU CLAIRE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 285.

No. 93–7226. FOLKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 93–7227. HARRIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 622 A. 2d 697.

No. 93–7231. BANKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 399.

No. 93–7232. DEL VISCOVO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 813.

No. 93–7233. SPELLMAN *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 614 So. 2d 366.

No. 93–7236. CROSS *v.* VICKREY ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–7237. TENNEY *v.* IDAHO DEPARTMENT OF FINANCE ET AL. Ct. App. Idaho. Certiorari denied. Reported below: 124 Idaho 243, 858 P. 2d 782.

No. 93–7238. RUMLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 1400 and 7 F. 3d 236.

No. 93–7239. ALEXANDER *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 990 F. 2d 1255.

No. 93–7240. CEBALLOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93–7241. Rivera *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 6 F. 3d 431.

No. 93–7242. Roman *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–7244. McCoy *v.* United States; and
No. 93–7251. Haggard *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93–7245. Payne *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93–7250. Hall *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1499.

No. 93–7252. Hilliard *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 11 F. 3d 618.

No. 93–7253. Herrera-Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93–7254. Huber *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 537.

No. 93–7255. Harvey *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 3 F. 3d 1294.

No. 93–7256. Geery *v.* Shelley School District. Sup. Ct. Idaho. Certiorari denied.

No. 93–7257. Harris *v.* Campbell, Judge, Circuit Court of Missouri, St. Louis County. Sup. Ct. Mo. Certiorari denied.

No. 93–7258. Garrett *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 390.

No. 93–7259. Hamilton *v.* Aetna Life & Casualty Co. C. A. 2d Cir. Certiorari denied. Reported below: 5 F. 3d 642.

No. 93–7260. Graham *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93–7261. Daniel *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 3 F. 3d 775.

No. 93–7262. Glover *v.* Department of the Air Force et al. C. A. D. C. Cir. Certiorari denied.

No. 93–7263. Hofstatter *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 8 F. 3d 316.

No. 93–7265. Saunders *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 4th 580, 853 P. 2d 1093.

No. 93–7266. Smith *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–7267. Wilson *v.* Lindler, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 173.

No. 93–7271. White et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 221.

No. 93–7272. Joiner *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 93–7273. Kantola *v.* Snider, Acting Chief Deputy Warden. C. A. 9th Cir. Certiorari denied.

No. 93–7274. Robinson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1110.

No. 93–7275. Norman *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 368.

No. 93–7276. Manrique *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93–7277. Pitera *v.* United States; and Labosco et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 5 F. 3d 624 (first case); 9 F. 3d 1538 (second case).

No. 93–7279. McGregor *v.* Louisiana State University Board of Supervisors et al. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 850.

No. 93–7280. Carey *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 226.

No. 93–7282. Jones *v.* Barr, Former Attorney General of the United States, et al. C. A. 8th Cir. Certiorari denied. Reported below: 22 F. 3d 306.

No. 93-7283. SMITH *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-7285. WILLIAMS *v.* ADAMS. C. A. 8th Cir. Certiorari denied. Reported below: 989 F. 2d 506.

No. 93-7288. BOALBEY *v.* HAWES ET AL. C. A. 7th Cir. Certiorari denied.

No. 93-7289. WOODARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93-7290. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 368.

No. 93-7291. HOLLEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 1 F. 3d 45.

No. 93-7293. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93-7294. IGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 2 F. 3d 403.

No. 93-7295. BYNUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 3 F. 3d 769.

No. 93-7296. BLEVINS *v.* SHIPLEVY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93-7297. DELPH *v.* INTERNATIONAL PAPER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 5 F. 3d 531.

No. 93-7298. REID *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 997 F. 2d 1576.

No. 93-7301. CASTRO *v.* TAFOYA, JUDGE, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 93-7302. CAMPBELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93-7303. AVERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 226.

No. 93-7304. ALLEN *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 6 F. 3d 458.

No. 93–7305. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93–7306. IL HWAN KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 32.

No. 93–7307. KILLION *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 927.

No. 93–7308. HAWLEY *v.* STEPANIK, SUPERINTENDENT, PENNSYLVANIA STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 47.

No. 93–7309. GIBBONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1544.

No. 93–7310. DUEST *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 997 F. 2d 1336.

No. 93–7311. BIVENS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 109.

No. 93–7312. CHANEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 372.

No. 93–7313. ARNPRIESTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 30.

No. 93–7314. KARIM-PANAHI *v.* CALIFORNIA DEPARTMENT OF TRANSPORTATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1225.

No. 93–7324. BOWERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1541.

No. 93–7325. VILLEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93–7326. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 102.

No. 93–7328. VEYSADA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 1245.

No. 93–7330. SHANAHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1159.

No. 93–7332. BOYD *v.* CODY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 404.

No. 93–7334. BURTCHELL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 93–7335. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–7338. WAGES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 72.

No. 93–7339. WATERS *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 93–7340. BOWMAN *v.* OKLAHOMA COUNTY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 545.

No. 93–7341. WALCOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 822.

No. 93–7342. WAGNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 544.

No. 93–7345. CHARGOIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 229.

No. 93–7349. BROWN *v.* SHEFFIELD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 984.

No. 93–7350. BORROMEO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93–7352. DOYLE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 248 Ill. App. 3d 301, 618 N. E. 2d 445.

No. 93–7354. BROWN *v.* MANUELIAN. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 204.

No. 93–7357. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 7 F. 3d 240.

No. 93–7358. BURGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93–7360. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 868.

No. 93–7361. McNeil et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 987.

No. 93–7366. Ritchie *v.* Eberhart, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 11 F. 3d 587.

No. 93–7372. Brown *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 591 So. 2d 180.

No. 93–7374. Ayrs *v.* Yanik et al. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 34.

No. 93–7375. DeOvalle *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 93–7377. Yi-Hai Lin *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 544.

No. 93–7382. Schwarz *v.* Department of Commerce. C. A. D. C. Cir. Certiorari denied.

No. 93–7383. Velez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 207.

No. 93–7384. Scott *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 1046.

No. 93–7387. Padgett *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 248 Ill. App. 3d 1018, 618 N. E. 2d 982.

No. 93–7388. Mata *v.* South San Antonio Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 230.

No. 93–7390. Murphy *v.* Jones, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–7391. Murray *v.* Stempson et al. C. A. D. C. Cir. Certiorari denied.

No. 93–7392. Marvin *v.* Smith et al. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 28.

No. 93–7395. Perroton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 992 F. 2d 1220.

No. 93–7397. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 7 F. 3d 240.

No. 93–7398. WARE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93–7400. VILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1497.

No. 93–7401. SUSSKIND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 1400 and 7 F. 3d 236.

No. 93–7402. BECKETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 109.

No. 93–7405. NEWLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 822.

No. 93–7406. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1497.

No. 93–7408. LOPEZ-MESA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 993 F. 2d 1553.

No. 93–7409. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 113.

No. 93–7411. POLLAND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 994 F. 2d 1262.

No. 93–7415. STIVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 298.

No. 93–7420. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 5 F. 3d 1491.

No. 93–7424. GIBSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1536.

No. 93–7427. MADDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 548.

No. 93–7428. LUFF *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 1464, 619 N. E. 2d 698.

No. 93–7432. NGUMOHA *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 245 Ill. App. 3d 1114, 657 N. E. 2d 1214.

No. 93–7433. LOUCKS *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 93–7435. MARTINEZ *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–7438. BRICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 229.

No. 93–7448. ANDRELLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 247.

No. 93–7449. BROOKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 838.

No. 93–7451. HINOJOSA-BENCOMO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 1045.

No. 93–7465. PRECIADO-QUINONEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–7466. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 103.

No. 93–7467. MINGO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 626 So. 2d 259.

No. 93–7468. WORTHAM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 72.

No. 93–7471. NWAEBO, AKA EBO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93–7474. ZANDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 33.

No. 93–7478. REMBOLD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 822.

No. 93–7480. BARNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 795.

No. 93–7481. DARNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93–7486. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 597.

No. 93–7489. RICHARDSON ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93–7490. EGWUH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 230.

No. 93–7498. MITCHELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 629 A. 2d 10.

No. 93–7499. LONGORIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 32.

No. 93–7501. MALDONADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1542.

No. 93–7502. LAFLEUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 20.

No. 93–7504. PALMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 3 F. 3d 300.

No. 93–7506. BROCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 113.

No. 93–7509. DUNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 602.

No. 93–7512. JOSEPH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7513. HAMELL, AKA HAMELL-EL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 1187.

No. 93–7517. HORNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 579.

No. 93–7519. FLORES-MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 1045.

No. 93–7520. KILLS ENEMY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 1201.

No. 93–7524. SABOUR *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 72.

No. 93–7527. Walkner *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 266.

No. 93–7529. Surface *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 822.

No. 93–7537. Humeumptewa *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93–7546. Escamilla *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93–7550. Blackmon *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93–7553. Lyle *v.* Richardson. C. A. 6th Cir. Certiorari denied.

No. 93–7560. Mayberry *v.* Keisler et al. C. A. 6th Cir. Certiorari denied.

No. 93–7563. Arch *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 1300.

No. 93–7576. Harvey *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93–7577. Gilmer *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–7581. Battles *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 49.

No. 93–7582. Amerson *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 1187.

No. 93–7589. Duvall *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 21.

No. 93–7590. Corbin *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 998 F. 2d 1377.

No. 93–7591. Benson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–7594. Nevers *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 59.

No. 93–7598. McCall *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 72.

No. 93–7600. Smith *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7601. Latimore *v.* Widseth. C. A. 8th Cir. Certiorari denied. Reported below: 7 F. 3d 709.

No. 93–7608. Hanserd *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7614. Harrill *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 12 F. 3d 207.

No. 93–7621. Cofield *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 11 F. 3d 413.

No. 93–817. Boeing Co. *v.* United States ex rel. Kelly. C. A. 9th Cir. Motions of Washington Legal Foundation, Rockwell International Corp. et al., Blue Cross & Blue Shield Association, Hughes Aircraft Co. et al., and Aerospace Industries Association of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 9 F. 3d 743.

No. 93–860. Ivy, Individually and as Representative of the Estate of Ivy, Deceased, et al. *v.* Diamond Shamrock Chemicals Co. et al.; and

No. 93–1035. Hartman et al. *v.* Diamond Shamrock Chemicals Co. et al. C. A. 2d Cir. Certiorari denied. Justice Stevens took no part in the consideration or decision of these petitions. Reported below: 996 F. 2d 1425.

No. 93–963. Reichlin et al. *v.* Enweremadu et al. C. A. 4th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 2 F. 3d 1149.

No. 93–1014. Regents of the University of California *v.* Genentech, Inc. C. A. Fed. Cir. Certiorari denied. Justice O'Connor took no part in the consideration or decision of this petition. Reported below: 998 F. 2d 931.

No. 93–1041. Johnson *v.* Dodge County Department of Human Services et al. Ct. App. Minn. Certiorari denied.

Justice Blackmun took no part in the consideration or decision of this petition.

No. 93–1051. Singletary, Secretary, Florida Department of Corrections *v.* Duest. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 997 F. 2d 1336.

No. 93–1078. Baltimore Teachers Union, American Federation of Teachers Local 340, AFL–CIO, et al. *v.* Mayor and City Council of Baltimore, Maryland, et al.; and

No. 93–1173. Baltimore City Lodge Number 3, Fraternal Order of Police *v.* Mayor and City Council of Baltimore, Maryland, et al. C. A. 4th Cir. Motion of Fraternal Order of Police, Grand Lodge, for leave to file a brief as *amicus curiae* in No. 93–1173 granted. Certiorari denied. Reported below: 6 F. 3d 1012.

No. 93–7054. Callins *v.* Collins, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 269.

Justice Scalia, concurring.

Justice Blackmun dissents from the denial of certiorari in this case with a statement explaining why the death penalty "as currently administered," *post,* at 1159, is contrary to the Constitution of the United States. That explanation often refers to "intellectual, moral, and personal" perceptions, but never to the text and tradition of the Constitution. It is the latter rather than the former that ought to control. The Fifth Amendment provides that "[n]o person shall be held to answer for a capital . . . crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life, . . . without due process of law." This clearly permits the death penalty to be imposed, and establishes beyond doubt that the death penalty is not one of the "cruel and unusual punishments" prohibited by the Eighth Amendment.

As Justice Blackmun describes, however, over the years since 1972 this Court has attached to the imposition of the death penalty two quite incompatible sets of commands: The sentencer's discretion to impose death must be closely confined, see *Furman* v. *Georgia,* 408 U. S. 238 (1972) *(per curiam),* but the sentencer's discretion *not* to impose death (to extend mercy) must be unlimited, see *Eddings* v. *Oklahoma*, 455 U. S. 104 (1982); *Lockett* v. *Ohio*, 438 U. S. 586 (1978) (plurality opinion). These commands were invented without benefit of any textual or historical support; they are the product of just such "intellectual, moral, and personal" perceptions as JUSTICE BLACKMUN expresses today, some of which (viz., those that have been "perceived" simultaneously by five Members of the Court) have been made part of what is called "the Court's Eighth Amendment jurisprudence," *post*, at 1148.

Though JUSTICE BLACKMUN joins those of us who have acknowledged the incompatibility of the Court's *Furman* and *Lockett-Eddings* lines of jurisprudence, see *Graham* v. *Collins*, 506 U. S. 461, 478 (1993) (THOMAS, J., concurring); *Walton* v. *Arizona*, 497 U. S. 639, 656–673 (1990) (SCALIA, J., concurring in part and concurring in judgment), he unfortunately draws the wrong conclusion from the acknowledgment. He says:

> "[T]he proper course when faced with irreconcilable constitutional commands is not to ignore one or the other, nor to pretend that the dilemma does not exist, but to admit the futility of the effort to harmonize them. This means accepting the fact that the death penalty cannot be administered in accord with our Constitution." *Post*, at 1157.

Surely a different conclusion commends itself—to wit, that at least one of these judicially announced irreconcilable commands which cause the Constitution to prohibit what its text explicitly permits must be wrong.

Convictions in opposition to the death penalty are often passionate and deeply held. That would be no excuse for reading them into a Constitution that does not contain them, even if they represented the convictions of a majority of Americans. Much less is there any excuse for using that course to thrust a minority's views upon the people. JUSTICE BLACKMUN begins his statement by describing with poignancy the death of a convicted murderer by lethal injection. He chooses, as the case in which to make that statement, one of the less brutal of the murders that regularly come before us—the murder of a man ripped by a bullet suddenly and unexpectedly, with no opportunity to prepare himself and his affairs, and left to bleed to death on the floor of a tavern. The death-by-injection which JUSTICE BLACKMUN describes looks pretty desirable next to that. It looks even better next to some of the other cases currently before us which JUSTICE BLACKMUN did not select as the vehicle for his announcement that the death penalty is always unconstitutional—for example, the case of the 11-year-old girl raped by four men and then killed by stuffing her panties down her throat. See *McCollum* v. *North Carolina*, cert. pending, No. 93–7200. How enviable a quiet death by lethal injection compared with that! If the people conclude that such more brutal deaths may be deterred by capital punishment; indeed, if they merely conclude that justice requires such brutal deaths to be avenged by capital punishment; the creation of false, untextual, and unhistorical contradictions within "the Court's Eighth Amendment jurisprudence" should not prevent them.

JUSTICE BLACKMUN, dissenting.

On February 23, 1994, at approximately 1:00 a.m., Bruce Edwin Callins will be executed by the State of Texas. Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses, standing a few feet away, will behold Callins, no longer a defendant, an appellant, or a petitioner, but a man, strapped to a gurney, and seconds away from extinction.

Within days, or perhaps hours, the memory of Callins will begin to fade. The wheels of justice will churn again, and somewhere, another jury or another judge will have the unenviable task of determining whether some human being is to live or die. We hope, of course, that the defendant whose life is at risk will be represented by competent counsel—someone who is inspired by the awareness that a less than vigorous defense truly could have fatal consequences for the defendant. We hope that the attorney will investigate all aspects of the case, follow all evidentiary and procedural rules, and appear before a judge who is still committed to the protection of defendants' rights—even now, as the prospect of meaningful judicial oversight has diminished. In the same vein, we hope that the prosecution, in urging the penalty of death, will have exercised its discretion wisely, free from bias, prejudice, or political motive, and will be humbled, rather than emboldened, by the awesome authority conferred by the State.

But even if we can feel confident that these actors will fulfill their roles to the best of their human ability, our collective conscience will remain uneasy. Twenty years have passed since this

Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, see *Furman* v. *Georgia*, 408 U. S. 238 (1972), and, despite the effort of the States and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake. This is not to say that the problems with the death penalty today are identical to those that were present 20 years ago. Rather, the problems that were pursued down one hole with procedural rules and verbal formulas have come to the surface somewhere else, just as virulent and pernicious as they were in their original form. Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death, see *Furman* v. *Georgia, supra,* can never be achieved without compromising an equally essential component of fundamental fairness—individualized sentencing. See *Lockett* v. *Ohio*, 438 U. S. 586 (1978).

It is tempting, when faced with conflicting constitutional commands, to sacrifice one for the other or to assume that an acceptable balance between them already has been struck. In the context of the death penalty, however, such jurisprudential maneuvers are wholly inappropriate. The death penalty must be imposed "fairly, and with reasonable consistency, or not at all." *Eddings* v. *Oklahoma,* 455 U. S. 104, 112 (1982).

To be fair, a capital sentencing scheme must treat each person convicted of a capital offense with that "degree of respect due the uniqueness of the individual." *Lockett* v. *Ohio,* 438 U. S., at 605 (plurality opinion). That means affording the sentencer the power and discretion to grant mercy in a particular case, and providing avenues for the consideration of any and all relevant mitigating evidence that would justify a sentence less than death. Reasonable consistency, on the other hand, requires that the death penalty be inflicted evenhandedly, in accordance with reason and objective standards, rather than by whim, caprice, or prejudice. Finally, because human error is inevitable, and because our criminal justice system is less than perfect, searching appellate review of death sentences and their underlying convictions is a prerequisite to a constitutional death penalty scheme.

On their face, these goals of individual fairness, reasonable consistency, and absence of error appear to be attainable: Courts are in the very business of erecting procedural devices from which fair, equitable, and reliable outcomes are presumed to flow. Yet, in the death penalty area, this Court, in my view, has engaged in a futile effort to balance these constitutional demands, and now is retreating not only from the *Furman* promise of consistency and rationality, but from the requirement of individualized sentencing as well. Having virtually conceded that both fairness and rationality cannot be achieved in the administration of the death penalty, see *McCleskey* v. *Kemp*, 481 U. S. 279, 313, n. 37 (1987), the Court has chosen to deregulate the entire enterprise, replacing, it would seem, substantive constitutional requirements with mere esthetics, and abdicating its statutorily and constitutionally imposed duty to provide meaningful judicial oversight to the administration of death by the States.

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor.[1] Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants "deserve" to die?—cannot be answered in the affirmative. It is not simply that this Court has allowed vague aggravating circumstances to be employed, see, *e. g.*, *Arave* v. *Creech*, 507 U. S. 463 (1993), relevant mitigating evidence to be disregarded, see, *e. g.*, *Johnson* v. *Texas*, 509 U. S. 350 (1993), and vital judicial review to be blocked, see, *e. g.*, *Coleman* v. *Thompson*, 501 U. S. 722 (1991). The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.[2]

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[1] As a member of the United States Court of Appeals, I voted to enforce the death penalty, even as I stated publicly that I doubted its moral, social, and constitutional legitimacy. See *Feguer* v. *United States*, 302 F. 2d 214 (CA8), cert. denied, 371 U. S. 872 (1962); *Pope* v. *United States*, 372 F. 2d 710 (CA8 1967) (en banc), vacated and remanded, 392 U. S. 651 (1968); *Maxwell* v. *Bishop*, 398 F. 2d 138, 153–154 (CA8 1968), vacated and remanded, 398 U. S. 262 (1970). See *Furman* v. *Georgia*, 408 U. S. 238, 405 (1972).

I

In 1971, in an opinion which has proved partly prophetic, the second Justice Harlan, writing for the Court, observed:

> "Those who have come to grips with the hard task of actually attempting to draft means of channeling capital sentencing discretion have confirmed the lesson taught by the history recounted above. To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability . . . . For a court to attempt to catalog the appropriate factors in this elusive area could inhibit rather than expand the scope of consideration, for no list of circumstances would ever be really complete." *McGautha* v. *California,* 402 U. S. 183, 204, 208.

In *McGautha,* the petitioner argued that a statute which left the penalty of death entirely in the jury's discretion, without any standards to govern its imposition, violated the Fourteenth Amendment. Although the Court did not deny that serious risks were associated with a sentencer's unbounded discretion, the Court found no remedy in the Constitution for the inevitable failings of human judgment.

A year later, the Court reversed its course completely in *Furman* v. *Georgia,* 408 U. S. 238 (1972) (*per curiam,* with each of the nine Justices writing separately). The concurring Justices argued that the glaring inequities in the administration of death, the standardless discretion wielded by judges and juries, and the pervasive racial and economic discrimination rendered the death penalty, at least as administered, "cruel and unusual" within the meaning of the Eighth Amendment. Justice White explained that, out of the hundreds of people convicted of murder every year, only a handful were sent to their deaths, and that there was "no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." *Id.*, at 313. If any discernible basis could be identified for the selection of those few who were chosen to die, it was "the constitutionally impermissible basis of race." *Id.*, at 310 (Stewart, J., concurring).

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[2] Because I conclude that no sentence of death may be constitutionally imposed under our death penalty scheme, I do not address Callins' individual claims of error. I note, though, that the Court has stripped "state prisoners of virtually *any* meaningful federal review of the constitutionality of their incarceration." *Butler* v. *McKellar,* 494 U. S. 407, 417 (1990) (Brennan, J., dissenting) (emphasis in original). Even if Callins had a legitimate claim of constitutional error, this Court would be deaf to it on federal habeas unless "the state court's rejection of the constitutional challenge was *so* clearly invalid under then-prevailing legal standards that the decision could not be defended by any reasonable jurist." *Id.,* at 417–418 (emphasis in original). That a capital defendant facing imminent execution is required to meet such a standard before the Court will remedy constitutional violations is indefensible.

I dissented in *Furman*. Despite my intellectual, moral, and personal objections to the death penalty, I refrained from joining the majority because I found objectionable the Court's abrupt change of position in the single year that had passed since *McGautha*. While I agreed that the Eighth Amendment's prohibition against cruel and unusual punishments "'may acquire meaning as public opinion becomes enlightened by a humane justice,'" 408 U. S., at 409, quoting *Weems* v. *United States*, 217 U. S. 349, 378 (1910), I objected to the "suddenness of the Court's perception of progress in the human attitude since decisions of only a short while ago." 408 U. S., at 410. Four years after *Furman* was decided, I concurred in the judgment in *Gregg* v. *Georgia*, 428 U. S. 153 (1976), and its companion cases which upheld death sentences rendered under statutes passed after *Furman* was decided. See *Proffitt* v. *Florida*, 428 U. S. 242, 261 (1976), and *Jurek* v. *Texas*, 428 U. S. 262, 279 (1976). Cf. *Woodson* v. *North Carolina*, 428 U. S. 280, 307 (1976), and *Roberts* v. *Louisiana*, 428 U. S. 325, 363 (1976).

A

There is little doubt now that *Furman*'s essential holding was correct. Although most of the public seems to desire, and the Constitution appears to permit, the penalty of death, it surely is beyond dispute that if the death penalty cannot be administered consistently and rationally, it may not be administered at all. *Eddings* v. *Oklahoma*, 455 U. S., at 112. I never have quarreled with this principle; in my mind, the real meaning of *Furman*'s diverse concurring opinions did not emerge until some years after

Furman was decided. See *Gregg* v. *Georgia*, 428 U. S., at 189 (opinion of Stewart, Powell, and STEVENS, JJ.) ("*Furman* mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action"). Since *Gregg*, I faithfully have adhered to the *Furman* holding and have come to believe that it is indispensable to the Court's Eighth Amendment jurisprudence.

Delivering on the *Furman* promise, however, has proved to be another matter. *Furman* aspired to eliminate the vestiges of racism and the effects of poverty in capital sentencing; it deplored the "wanton" and "random" infliction of death by a government with constitutionally limited power. *Furman* demanded that the sentencer's discretion be directed and limited by procedural rules and objective standards in order to minimize the risk of arbitrary and capricious sentences of death.

In the years following *Furman*, serious efforts were made to comply with its mandate. State legislatures and appellate courts struggled to provide judges and juries with sensible and objective guidelines for determining who should live and who should die. Some States attempted to define who is "deserving" of the death penalty through the use of carefully chosen adjectives, reserving the death penalty for those who commit crimes that are "especially heinous, atrocious, or cruel," see Fla. Stat. § 921.141(5)(h) (1977), or "wantonly vile, horrible or inhuman," see Ga. Code Ann. § 27–2534.1(b)(7) (1978). Other States enacted mandatory death penalty statutes, reading *Furman* as an invitation to eliminate sentencer discretion altogether. See, *e. g.*, N. C. Gen. Stat. § 14–17 (Supp. 1975). But see *Woodson* v. *North Carolina*, 428 U. S. 280 (1976) (invalidating mandatory death penalty statutes). Still other States specified aggravating and mitigating factors that were to be considered by the sentencer and weighed against one another in a calculated and rational manner. See, *e. g.*, Ga. Code Ann. § 17–10–30(c) (1982); cf. Tex. Code Crim. Proc. Ann., Art. 37.071(c)–(e) (Vernon 1981 and Supp. 1989) (identifying "special issues" to be considered by the sentencer when determining the appropriate sentence).

Unfortunately, all this experimentation and ingenuity yielded little of what *Furman* demanded. It soon became apparent that discretion could not be eliminated from capital sentencing without threatening the fundamental fairness due a defendant when life is at stake. Just as contemporary society was no longer tolerant of the random or discriminatory infliction of the penalty of death, see *Furman*, *supra*, evolving standards of decency required due consideration of the uniqueness of each individual defendant when imposing society's ultimate penalty. See *Woodson*, 428 U. S., at 301 (opinion of Stewart, Powell, and STEVENS, JJ.), referring to *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion).

This development in the American conscience would have presented no constitutional dilemma if fairness to the individual could be achieved without sacrificing the consistency and rationality promised in *Furman*. But over the past two decades, efforts to balance these competing constitutional commands have been to no avail. Experience has shown that the consistency and rationality promised in *Furman* are inversely related to the fairness owed the individual when considering a sentence of death. A step toward consistency is a step away from fairness.

B

There is a heightened need for fairness in the administration of death. This unique level of fairness is born of the appreciation that death truly is different from all other punishments a society inflicts upon its citizens. "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two." *Woodson*, 428 U. S., at 305 (opinion of Stewart, Powell, and STEVENS, JJ.). Because of the qualitative difference of the death penalty, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Ibid.* In *Woodson*, a decision striking down mandatory death penalty statutes as unconstitutional, a plurality of the Court explained: "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind." *Id.*, at 304.

While the risk of mistake in the determination of the appropriate penalty may be tolerated in other areas of the criminal law, "in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Ibid.* Thus, although individualized sentencing in capital cases was not considered essential at the time the Constitution was adopted, *Woodson* recognized that American standards of decency could no longer tolerate a capital sentencing process that failed to afford a defendant individualized consideration in the determination whether he or she should live or die. *Id.*, at 301.

The Court elaborated on the principle of individualized sentencing in *Lockett* v. *Ohio*, 438 U. S. 586 (1978). In that case, a plurality acknowledged that strict restraints on sentencer discretion are necessary to achieve the consistency and rationality promised in *Furman*, but held that, in the end, the sentencer must retain unbridled discretion to afford mercy. Any process or procedure that prevents the sentencer from considering "*as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death" creates the constitutionally intolerable risk that "the death penalty will be imposed in spite of factors which may call for a less severe penalty." *Id.*, at 604–605 (emphasis in original). See also *Sumner* v. *Shuman*, 483 U. S. 66 (1987) (invalidating a mandatory death penalty statute reserving the death penalty for life-term inmates convicted of murder). The Court's duty under the Constitution therefore is to "develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual." *Eddings* v. *Oklahoma*, 455 U. S., at 110.

C

I believe the *Woodson-Lockett* line of cases to be fundamentally sound and rooted in American standards of decency that have evolved over time. The notion of prohibiting a sentencer from exercising its discretion "to dispense mercy on the basis of factors too intangible to write into a statute," *Gregg*, 428 U. S., at 222 (White, J., concurring), is offensive to our sense of fundamental fairness and respect for the uniqueness of the individual. In *California* v. *Brown*, 479 U. S. 538 (1987), I said in dissent:

> "The sentencer's ability to respond with mercy towards a defendant has always struck me as a particularly valuable aspect of the capital sentencing procedure. . . . [W]e adhere

> so strongly to our belief that sentencers should have the opportunity to spare a capital defendant's life on account of compassion for the individual because, recognizing that the capital sentencing decision must be made in the context of 'contemporary values,' *Gregg* v. *Georgia*, 428 U. S., at 181 (opinion of Stewart, POWELL, and STEVENS, JJ.), we see in the sentencer's expression of mercy a distinctive feature of our society that we deeply value." *Id.*, at 562–563.

Yet, as several Members of the Court have recognized, there is real "tension" between the need for fairness to the individual and the consistency promised in *Furman*. See *Franklin* v. *Lynaugh*, 487 U. S. 164, 182 (1988) (plurality opinion); *California* v. *Brown*, 479 U. S., at 544 (O'CONNOR, J., concurring); *McCleskey* v. *Kemp*, 481 U. S., at 363 (BLACKMUN, J., dissenting); *Graham* v. *Collins*, 506 U. S. 461, 478 (1993) (THOMAS, J., concurring). On the one hand, discretion in capital sentencing must be "'controlled by clear and objective standards so as to produce non-discriminatory [and reasoned] application.'" *Gregg*, 428 U. S., at 198 (opinion of Stewart, Powell, and STEVENS, JJ.), quoting *Coley* v. *State*, 231 Ga. 829, 834, 204 S. E. 2d 612, 615 (1974). On the other hand, the Constitution also requires that the sentencer be able to consider "any relevant mitigating evidence regarding the defendant's character or background, and the circumstances of the particular offense." *California* v. *Brown*, 479 U. S., at 544 (O'CONNOR, J., concurring). The power to consider mitigating evidence that would warrant a sentence less than death is meaningless unless the sentencer has the discretion and authority to dispense mercy based on that evidence. Thus, the Constitution, by requiring a heightened degree of fairness to the individual, and also a greater degree of equality and rationality in the administration of death, demands sentencer discretion that is at once generously expanded and severely restricted.

This dilemma was laid bare in *Penry* v. *Lynaugh*, 492 U. S. 302 (1989). The defendant in *Penry* challenged the Texas death penalty statute, arguing that it failed to allow the sentencing jury to give full mitigating effect to his evidence of mental retardation and history of child abuse. The Texas statute required the jury, during the penalty phase, to answer three "special issues"; if the jury unanimously answered "yes" to each issue, the trial court was obligated to sentence the defendant to death. Tex. Code

Crim. Proc. Ann., Art. 37.071(c)–(e) (Vernon 1981 and Supp. 1989). Only one of the three issues—whether the defendant posed a "continuing threat to society"—was related to the evidence Penry offered in mitigation. But Penry's evidence of mental retardation and child abuse was a two-edged sword as it related to that special issue: "[I]t diminish[ed] his blameworthiness for his crime even as it indicate[d] that there [was] a probability that he [would] be dangerous in the future." 492 U. S., at 324. The Court therefore reversed Penry's death sentence, explaining that a reasonable juror could have believed that the statute prohibited a sentence less than death based upon his mitigating evidence. *Id.*, at 326.

After *Penry*, the paradox underlying the Court's post-*Furman* jurisprudence was undeniable. Texas had complied with *Furman* by severely limiting the sentencer's discretion, but those very limitations rendered Penry's death sentence unconstitutional.

D

The theory underlying *Penry* and *Lockett* is that an appropriate balance can be struck between the *Furman* promise of consistency and the *Lockett* requirement of individualized sentencing if the death penalty is conceptualized as consisting of two distinct stages.[3] In the first stage of capital sentencing, the demands of *Furman* are met by "narrowing" the class of death-eligible offenders according to objective, fact-bound characteristics of the defendant or the circumstances of the offense. Once the pool of death-eligible defendants has been reduced, the sentencer retains the discretion to consider whatever relevant mitigating evidence the defendant chooses to offer. See *Graham* v. *Collins*, 506 U. S., at 503–504 (STEVENS, J., dissenting) (arguing that providing full discretion to the sentencer is not inconsistent with *Furman* and may actually help to protect against arbitrary and capricious sentencing).

Over time, I have come to conclude that even this approach is unacceptable: It simply reduces, rather than eliminates, the number of people subject to arbitrary sentencing.[4] It is the decision to sentence a defendant to death—not merely the decision to make a defendant eligible for death—that may not be arbitrary. While one might hope that providing the sentencer with as much relevant mitigating evidence as possible will lead to more rational and consistent sentences, experience has taught otherwise. It seems that the decision whether a human being should live or die is so inherently subjective—rife with all of life's understandings, experiences, prejudices, and passions—that it inevitably defies the rationality and consistency required by the Constitution.

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[3] See Sundby, The *Lockett* Paradox: Reconciling Guided Discretion and Unguided Mitigation in Capital Sentencing, 38 UCLA L. Rev. 1147, 1162 (1991).

[4] The narrowing of death-eligible defendants into a smaller subgroup coupled with the unbridled discretion to pick among them arguably emphasizes rather than ameliorates the inherent arbitrariness of the death penalty. Gillers, Deciding Who Dies, 129 U. Pa. L. Rev. 1, 27–28 (1980) (arguing that the

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The arbitrariness inherent in the sentencer's discretion to afford mercy is exacerbated by the problem of race. Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die. Perhaps it should not be surprising that the biases and prejudices that infect society generally would influence the determination of who is sentenced to death, even within the narrower pool of death-eligible defendants selected according to objective standards. No matter how narrowly the pool of death-eligible defendants is drawn according to objective standards, *Furman's* promise still will go unfulfilled so long as the sentencer is free to exercise unbridled discretion within the smaller group and thereby to discriminate. "'[T]he power to be lenient [also] is the power to discriminate.'" *McCleskey* v. *Kemp,* 481 U. S., at 312, quoting K. Davis, Discretionary Justice 170 (1973).

A renowned example of racism infecting a capital sentencing scheme is documented in *McCleskey* v. *Kemp,* 481 U. S. 279 (1987). Warren McCleskey, an African-American, argued that the Georgia capital sentencing scheme was administered in a racially discriminatory manner, in violation of the Eighth and Fourteenth Amendments. In support of his claim, he proffered a highly reliable statistical study (the Baldus study) which indicated that, "after taking into account some 230 nonracial factors that might legitimately influence a sentencer, the jury *more likely than not* would have spared McCleskey's life had his victim been black." *Id.,* at 325 (emphasis in original) (Brennan, J., dissenting). The Baldus

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inherent arbitrariness of the death penalty is only magnified by post-*Furman* statutes that allow the jury to choose among similarly situated defendants).

study further demonstrated that blacks who kill whites are sentenced to death "at nearly *22 times* the rate of blacks who kill blacks, and more than *7 times* the rate of whites who kill blacks." *Id.*, at 327 (emphasis in original).

Despite this staggering evidence of racial prejudice infecting Georgia's capital sentencing scheme, the majority turned its back on McCleskey's claims, apparently troubled by the fact that Georgia had instituted more procedural and substantive safeguards than most other States since *Furman*, but was still unable to stamp out the virus of racism. Faced with the apparent failure of traditional legal devices to cure the evils identified in *Furman*, the majority wondered aloud whether the consistency and rationality demanded by the dissent could ever be achieved without sacrificing the discretion which is essential to fair treatment of individual defendants:

> "[I]t is difficult to imagine guidelines that would produce the predictability sought by the dissent without sacrificing the discretion essential to a humane and fair system of criminal justice .... The dissent repeatedly emphasizes the need for 'a uniquely high degree of rationality in imposing the death penalty' .... Again, no suggestion is made as to how greater 'rationality' could be achieved under any type of statute that authorizes capital punishment .... Given these safeguards already inherent in the imposition and review of capital sentences, the dissent's call for greater rationality is no less than a claim that a capital punishment system cannot be administered in accord with the Constitution." *Id.*, at 314–315, n. 37.

I joined most of Justice Brennan's significant dissent which expounded McCleskey's Eighth Amendment claim, and I wrote separately, *id.*, at 345, to explain that McCleskey also had a solid equal protection argument under the Fourteenth Amendment. I still adhere to the views set forth in both dissents, and, as far as I know, there has been no serious effort to impeach the Baldus study. Nor, for that matter, have proponents of capital punishment provided any reason to believe that the findings of that study are unique to Georgia.

The fact that we may not be capable of devising procedural or substantive rules to prevent the more subtle and often unconscious forms of racism from creeping into the system does not justify the wholesale abandonment of the *Furman* promise. To the contrary, where a morally irrelevant—indeed, a repugnant—consideration plays a major role in the determination of who shall live and who shall die, it suggests that the continued enforcement of the death penalty in light of its clear and admitted defects is deserving of a "sober second thought." Justice Brennan explained:

> "Those whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above society's demand for punishment. It is the particular role of courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life. The Court thus fulfills, rather than disrupts, the scheme of separation of powers by closely scrutinizing the imposition of the death penalty, for no decision of a society is more deserving of 'sober second thought.' Stone, The Common Law in the United States, 50 Harv. L. Rev. 4, 25 (1936)." *Id.*, at 343.

F

In the years since *McCleskey,* I have come to wonder whether there was truth in the majority's suggestion that discrimination and arbitrariness could not be purged from the administration of capital punishment without sacrificing the equally essential component of fairness—individualized sentencing. Viewed in this way, the consistency promised in *Furman* and the fairness to the individual demanded in *Lockett* are not only inversely related, but irreconcilable in the context of capital punishment. Any statute or procedure that could effectively eliminate arbitrariness from the administration of death would also restrict the sentencer's discretion to such an extent that the sentencer would be unable to give full consideration to the unique characteristics of each defendant and the circumstances of the offense. By the same token, any statute or procedure that would provide the sentencer with sufficient discretion to consider fully and act upon the unique circumstances of each defendant would "thro[w] open the back door to arbitrary and irrational sentencing." *Graham* v. *Collins,* 506 U. S., at 494 (THOMAS, J., concurring). All efforts to strike an appropriate balance between these conflicting constitutional commands are futile because there is a heightened need for both in the administration of death.

But even if the constitutional requirements of consistency and fairness are theoretically reconcilable in the context of capital punishment, it is clear that this Court is not prepared to meet the challenge. In apparent frustration over its inability to strike an appropriate balance between the *Furman* promise of consistency and the *Lockett* requirement of individualized sentencing, the Court has retreated from the field,[5] allowing relevant mitigating evidence to be discarded,[6] vague aggravating circumstances to be employed,[7] and providing no indication that the problem of race in the administration of death will ever be addressed. In fact some Members of the Court openly have acknowledged a willingness simply to pick one of the competing constitutional commands and sacrifice the other. See *Graham*, 506 U. S., at 478 (THOMAS, J., concurring) (calling for the reversal of *Penry*); *Walton* v. *Arizona*, 497 U. S. 639, 673 (1990) (SCALIA, J., concurring in part and concurring in judgment) (announcing that he will no longer enforce the requirement of individualized sentencing, and reasoning that either *Furman* or *Lockett* is wrong and a choice must be made between the two). These developments are troubling, as they ensure that death will continue to be meted out in this country arbitrarily and discriminatorily, and without that "degree of respect due the uniqueness of the individual." *Lockett,* 438 U. S., at 605. In my view, the proper course when faced with irreconcilable constitutional commands is not to ignore one or the other, nor to pretend that the dilemma does not exist, but to admit the futility of the effort to harmonize them. This means accepting the fact that the death penalty cannot be administered in accord with our Constitution.

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[5] See *Clemons* v. *Mississippi*, 494 U. S. 738 (1990) (concluding that appellate courts may engage in a reweighing of aggravating and mitigating circumstances in order to "cure" error in capital sentencing); *Blystone* v. *Pennsylvania*, 494 U. S. 299 (1990) (upholding a death penalty statute mandating death where aggravating, but no mitigating, circumstances are present, thus divesting the jury of its ability to make an individualized determination that death is the appropriate punishment in a particular case).

[6] See *Johnson* v. *Texas*, 509 U. S. 350 (1993) (affirming death sentence even though the jurors were not allowed to give full mitigating effect to the defendant's youth under the Texas death penalty statute); *Graham* v. *Collins*, 506 U. S. 461 (1993). See also *Saffle* v. *Parks*, 494 U. S. 484 (1990) (upholding death sentence where jurors were instructed to avoid "any influence of sympathy," because the claim was raised on federal habeas and a ruling for the petitioner would constitute a "new rule" of constitutional law); *Boyde* v. *California*, 494 U. S. 370 (1990) (upholding death sentence where jurors reasonably may have believed that they could not consider the defendant's mitigating evidence regarding his character and background); *Walton* v. *Arizona*, 497 U. S. 639 (1990) (affirming placement upon the defendant of the burden to establish mitigating circumstances sufficient to call for leniency).

The Court has also refused to hold the death penalty unconstitutional *per se* for juveniles, see *Stanford* v. *Kentucky*, 492 U. S. 361 (1989), and the mentally retarded, see *Penry* v. *Lynaugh*, 492 U. S. 302 (1989).

[7] See *Arave* v. *Creech*, 507 U. S. 463 (1993) (holding that an Idaho statute, as interpreted by the Idaho Supreme Court, which authorizes the death penalty for those murderers who have displayed "utter disregard for human life," genuinely narrows the class of death-eligible defendants); *Lewis* v. *Jeffers*, 497 U. S. 764 (1990) (affirming lenient standard for the review of the constitutional adequacy of aggravating circumstances).

II

My belief that this Court would not enforce the death penalty (even if it could) in accordance with the Constitution is buttressed by the Court's "obvious eagerness to do away with any restriction on the States' power to execute whomever and however they please." *Herrera* v. *Collins,* 506 U. S. 390, 446 (1993) (BLACKMUN, J., dissenting). I have explained at length on numerous occasions that my willingness to enforce the capital punishment statutes enacted by the States and the Federal Government, "notwithstanding my own deep moral reservations, . . . has always rested on an understanding that certain procedural safeguards, chief among them the Federal Judiciary's power to reach and correct claims of constitutional error on federal habeas review, would ensure that death sentences are fairly imposed." *Sawyer* v. *Whitley,* 505 U. S. 333, 358 (1992) (BLACKMUN, J., concurring in judgment). See also *Herrera,* 506 U. S., at 438–439 (BLACKMUN, J., dissenting). In recent years, I have grown increasingly skeptical that "the death penalty really can be imposed fairly and in accordance with the requirements of the Eighth Amendment," given the now limited ability of the federal courts to remedy constitutional errors. *Sawyer,* 505 U. S., at 351 (BLACKMUN, J., concurring in judgment).

Federal courts are required by statute to entertain petitions from state prisoners who allege that they are held "in violation of the Constitution or laws or the treaties of the United States." 28 U. S. C. § 2254(a). Serious review of these claims helps to ensure that government does not secure the penalty of death by depriving a defendant of his or her constitutional rights. At the time I voted with the majority to uphold the constitutionality of the death penalty in *Gregg* v. *Georgia*, 428 U. S., at 227 (opinion concurring in judgment), federal courts possessed much broader authority than they do today to address claims of constitutional error on habeas review. In 1976, there were few procedural barriers to the Federal Judiciary's review of a State's capital sentencing scheme, or the fairness and reliability of a State's decision to impose death in a particular case. Since then, however, the Court has "erected unprecedented and unwarranted barriers" to the Federal Judiciary's review of the constitutional claims of capital defendants. *Sawyer*, 505 U. S., at 351 (BLACKMUN, J., concurring in judgment). See, *e. g.*, *Herrera* v. *Collins, supra; Coleman* v. *Thompson*, 501 U. S. 722 (1991); *McCleskey* v. *Zant*, 499 U. S. 467 (1991); *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1 (1992) (overruling *Townsend* v. *Sain*, 372 U. S. 293 (1963), in part); *Teague* v. *Lane*, 489 U. S. 288 (1989); *Butler* v. *McKellar*, 494 U. S. 407 (1990).

The Court's refusal last Term to afford Leonel Torres Herrera an evidentiary hearing, despite his colorable showing of actual innocence, demonstrates just how far afield the Court has strayed from its statutorily and constitutionally imposed obligations. See *Herrera* v. *Collins, supra*. In *Herrera*, only a bare majority of this Court could bring itself to state forthrightly that the execution of an actually innocent person violates the Eighth Amendment. This concession was made only in the course of erecting nearly insurmountable barriers to a defendant's ability to get a hearing on a claim of actual innocence. *Ibid.* Certainly there will be individuals who are actually innocent who will be unable to make a better showing than what was made by Herrera without the benefit of an evidentiary hearing.[8] The Court is unmoved by this dilemma, however; it prefers "finality" in death sentences to reliable determinations of a capital defendant's guilt. Because I no longer can state with any confidence that this Court is able to reconcile the Eighth Amendment's competing constitutional commands, or that the Federal Judiciary will provide meaningful oversight to the state courts as they exercise their authority to inflict the penalty of death, I believe that the death penalty, as currently administered, is unconstitutional.

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[8] Even the most sophisticated death penalty schemes are unable to prevent human error from condemning the innocent. Innocent persons *have* been executed, see Bedau & Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stan. L. Rev. 21, 36, 173–179 (1987), perhaps recently, see *Herrera* v. *Collins*, 506 U. S. 390 (1993), and will continue to be executed under our death penalty scheme.

III

Perhaps one day this Court will develop procedural rules or verbal formulas that actually will provide consistency, fairness, and reliability in a capital sentencing scheme. I am not optimistic that such a day will come. I am more optimistic, though, that this Court eventually will conclude that the effort to eliminate arbitrariness while preserving fairness "in the infliction of [death] is so plainly doomed to failure that it—and the death penalty—must be abandoned altogether." *Godfrey* v. *Georgia*, 446 U. S. 420, 442 (1980) (Marshall, J., concurring in judgment). I may not live to see that day, but I have faith that eventually it will arrive. The path the Court has chosen lessens us all. I dissent.

Rehearing Denied

No. 93–603. Bewley *v.* Howell, Superintendent, Tulsa County Independent School District No. 1, et al., *ante*, p. 1012;

No. 93–734. Miller *v.* United States, *ante*, p. 1045;

No. 93–5019. Hawthorne *v.* California, *ante*, p. 1013;

No. 93–5299. Kendall *v.* Kendall, *ante*, p. 995;

No. 93–5559. Benjamin *v.* Brown, Secretary of Veterans Affairs, *ante*, p. 899;

No. 93–5565. Liebman *v.* Liebman, *ante*, p. 899;

No. 93–5929. Drayton *v.* Evatt, Commissioner, South Carolina Department of Corrections, *ante*, p. 1014;

No. 93–5963. Sochor *v.* Florida, *ante*, p. 1025;

No. 93–6032. Gaster *v.* Taylor, Warden, et al., *ante*, p. 955;

No. 93–6186. Brooke *v.* Duke et al., *ante*, p. 981;

No. 93–6233. Winfield *v.* Michigan, *ante*, p. 997;

No. 93–6329. Hegedeos *v.* Dyke College Board of Trustees et al., *ante*, p. 1015;

No. 93–6366. Erikson *v.* Rowland et al., *ante*, p. 1015;

No. 93–6383. Johnson *v.* Metropolitan Atlanta Rapid Transit Authority et al., *ante*, p. 1016;

No. 93–6387. Brocksmith *v.* United States, *ante*, p. 999;

No. 93–6491. Masoner *v.* Thurman, Warden, *ante*, p. 1028;

No. 93-6493. BERGMANN *v.* MCCAUGHTRY, WARDEN, *ante,* p. 1028;

No. 93-6554. NWABUEZE *v.* IMMIGRATION AND NATURALIZATION SERVICE, *ante,* p. 1052;

No. 93-6592. GHAZIBAYAT *v.* NEW YORK, *ante,* p. 1028;

No. 93-6593. HODGES ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, *ante,* p. 1018;

No. 93-6626. HAMILTON *v.* KIRKPATRICK, *ante,* p. 1054;

No. 93-6713. HARGROVE *v.* TANSY, WARDEN, *ante,* p. 1056;

No. 93-6717. PIONTEK *v.* UNITED STATES, *ante,* p. 1056;

No. 93-6811. ALLEN *v.* NEW YORK LIFE SECURITIES, INC., ET AL., *ante,* p. 1095;

No. 93-6934. COOPER *v.* SALOMON BROTHERS, INC., *ante,* p. 1063; and

No. 93-7177. JOHNS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, *ante,* p. 1081. Petitions for rehearing denied.

No. 93-237. MALONEY *v.* UNITED STATES ET AL., *ante,* pp. 915 and 1006. Motion of petitioner for leave to file second petition for rehearing denied.

No. 93-6243. AGUNBIADE *v.* UNITED STATES, *ante,* p. 1014;

No. 93-6262. PEARSALL *v.* PHILLIPS ET AL., *ante,* p. 998; and

No. 93-6435. BORTNICK *v.* WASHINGTON, *ante,* p. 1016. Motions for leave to file petitions for rehearing denied.

FEBRUARY 24, 1994

Dismissal Under Rule 46

No. 93-201. ALLEN & CO., INC. *v.* PACIFIC DUNLOP HOLDINGS INC. C. A. 7th Cir. [Certiorari granted, *ante,* p. 1083.] Writ of certiorari dismissed under this Court's Rule 46.

FEBRUARY 28, 1994

Affirmed on Appeal

No. 93-1090. MILLSAPS ET AL. *v.* LANGSDON ET AL. Affirmed on appeal from D. C. W. D. Tenn. Reported below: 836 F. Supp. 447.

Miscellaneous Orders

No. ———. ROMAN NOSE *v.* NEW MEXICO DEPARTMENT OF HUMAN RESOURCES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. D–1319. IN RE DISBARMENT OF COHN. Disbarment entered. [For earlier order herein, see *ante*, p. 941.]

No. D–1322. IN RE DISBARMENT OF IVERSON. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1325. IN RE DISBARMENT OF SAVOCA. Disbarment entered. [For earlier order herein, see *ante*, p. 974.]

No. D–1326. IN RE DISBARMENT OF LOBAR. Disbarment entered. [For earlier order herein, see *ante*, p. 974.]

No. D–1327. IN RE DISBARMENT OF WOLFE. Disbarment entered. [For earlier order herein, see *ante*, p. 974.]

No. D–1329. IN RE DISBARMENT OF KRINDLE. Disbarment entered. [For earlier order herein, see *ante*, p. 974.]

No. D–1332. IN RE DISBARMENT OF DAYS. Disbarment entered. [For earlier order herein, see *ante*, p. 987.]

No. D–1334. IN RE DISBARMENT OF BOYNE. Disbarment entered. [For earlier order herein, see *ante*, p. 1008.]

No. D–1335. IN RE DISBARMENT OF KRISTOFF. Disbarment entered. [For earlier order herein, see *ante*, p. 1021.]

No. D–1337. IN RE DISBARMENT OF AGRILLO. Disbarment entered. [For earlier order herein, see *ante*, p. 1022.]

No. D–1340. IN RE DISBARMENT OF KENNEDY. Beverly B. Kennedy, of Manchester, N. H., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 10, 1994 [*ante*, p. 1035], is hereby discharged.

No. 92–1662. UNITED STATES *v.* GRANDERSON. C. A. 11th Cir. [Certiorari granted, 509 U. S. 921.] Motion of respondent for leave to file a supplemental brief after argument granted.

No. 92–1956. CONSOLIDATED RAIL CORPORATION *v.* GOTTSHALL; and CONSOLIDATED RAIL CORPORATION *v.* CARLISLE. C. A. 3d Cir. [Certiorari granted, *ante,* p. 912.] Motion of Southeastern Pennsylvania Transportation Authority for leave to file a brief as *amicus curiae* granted.

No. 93–377. DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK ET AL. *v.* MILHELM ATTEA & BROS., INC., ET AL. Ct. App. N. Y. [Certiorari granted, *ante,* p. 943.] Motion of Oneida Indian Nation of New York for leave to file a supplemental brief as *amicus curiae* denied. JUSTICE BLACKMUN and JUSTICE STEVENS would grant this motion.

No. 93–518. DOLAN *v.* CITY OF TIGARD. Sup. Ct. Ore. [Certiorari granted, *ante,* p. 989.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–644. HONDA MOTOR CO., LTD., ET AL. *v.* OBERG. Sup. Ct. Ore. [Certiorari granted, *ante,* p. 1068.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 93–6781. IN RE NEWTOP. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1085] denied.

No. 93–6782. IN RE NEWTOP. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1085] denied.

No. 93–6919. IN RE ANDERSON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 1038] denied.

No. 93–7808. IN RE KLVANA; and
No. 93–7814. IN RE EDGINGTON. Petitions for writs of habeas corpus denied.

No. 93–7368. IN RE RYAN. Petition for writ of mandamus denied.

Certiorari Granted

No. 93–892. NTA GRAPHICS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari granted. Reported below: 996 F. 2d 1216.

No. 93–723. United States *v.* X-Citement Video, Inc., et al. C. A. 9th Cir. Motions of National Law Center for Children and Families et al. and National Family Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 982 F. 2d 1285.

Certiorari Denied

No. 93–700. Crancer *v.* Department of Justice. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 1302.

No. 93–713. Graham *v.* Florida Supreme Court et al. Sup. Ct. Fla. Certiorari denied. Reported below: 620 So. 2d 1273.

No. 93–737. Follette et al. *v.* Clairol, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93–750. Fowlin *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 423 Pa. Super. 633, 616 A. 2d 714.

No. 93–797. New York et al. *v.* Reich, Secretary of Labor, et al. C. A. 2d Cir. Certiorari denied. Reported below: 3 F. 3d 581.

No. 93–808. Feldman et al. *v.* Resolution Trust Corporation. C. A. 1st Cir. Certiorari denied. Reported below: 3 F. 3d 5.

No. 93–867. Foxx *v.* Dalton, Secretary of the Navy. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 984.

No. 93–878. Provizer et ux. *v.* Commissioner of Internal Revenue. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1216.

No. 93–890. McDonnell et al. *v.* City of Omaha, Nebraska. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 293.

No. 93–938. Dandy *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 998 F. 2d 1344.

No. 93–947. Dailey *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 37 M. J. 463.

No. 93–973. Manildra Milling Corp. *v.* OMI Holdings, Inc.; and

No. 93–1186. OMI Holdings, Inc. *v.* Manildra Milling Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 1 F. 3d 1253.

No. 93–1003. Sharp *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 33.

No. 93–1036. Selch *v.* Letts, Director, Indiana Department of Highways, et al. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1040.

No. 93–1066. Saulpaugh et al. *v.* Monroe Community Hospital et al. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 134.

No. 93–1071. Mertens *v.* Wilkinson, Governor of Kentucky, et al. Sup. Ct. Ky. Certiorari denied.

No. 93–1083. Doe *v.* Bennett et al. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 1412.

No. 93–1085. Turner, Individually in His Former Capacity as Superintendent of Glades Correctional Institution, et al. *v.* LaMarca et al. C. A. 11th Cir. Certiorari denied. Reported below: 995 F. 2d 1526.

No. 93–1087. Ferri *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 410 Pa. Super. 67, 599 A. 2d 208.

No. 93–1092. Smith et ux. *v.* Greenwich Zoning Board of Appeals et al. Sup. Ct. Conn. Certiorari denied. Reported below: 227 Conn. 71, 629 A. 2d 1089.

No. 93–1099. Heuer *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 4 F. 3d 723.

No. 93–1101. Brunet et al. *v.* Tucker et al. C. A. 6th Cir. Certiorari denied. Reported below: 1 F. 3d 390.

No. 93–1102. Valutron, N. V., et al. *v.* NCR Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 5 F. 3d 1506.

No. 93–1111. Bradley *v.* Colorado. Dist. Ct. Jefferson County, Colo. Certiorari denied.

No. 93–1112. Wright *v.* John Deere Industrial Equipment Co. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 991.

No. 93–1113. Chapman et al. *v.* Klemick et al. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 1508.

No. 93–1116. Brown *v.* Penn Central Transportation Co. et al. C. A. 3d Cir. Certiorari denied. Reported below: 995 F. 2d 216.

No. 93–1117. Ocean Marine Mutual Protection & Indemnity Assn., Ltd., et al. *v.* Wilson. C. A. 11th Cir. Certiorari denied.

No. 93–1122. Friedman *v.* United States; and
No. 93–1123. Hughes *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 235.

No. 93–1125. Reeder *v.* Succession of Palmer. Sup. Ct. La. Certiorari denied. Reported below: 623 So. 2d 1268.

No. 93–1126. Louisiana Power & Light Co. *v.* Bourgeois. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 620 So. 2d 306.

No. 93–1138. Waters et al. *v.* University of Alabama Birmingham Medical Center et al. Sup. Ct. Ala. Certiorari denied. Reported below: 629 So. 2d 816.

No. 93–1148. Loce *v.* New Jersey; and
No. 93–1149. Krail et al. *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 267 N. J. Super. 10, 630 A. 2d 792.

No. 93–1155. Ardoin *v.* Seacor Marine, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93–1242. Austin *v.* Healy, United States Marshal, Eastern District of New York. C. A. 2d Cir. Certiorari denied. Reported below: 5 F. 3d 598.

No. 93–5785. Gorham *v.* Singletary, Secretary, Florida Department of Corrections, et al. Sup. Ct. Fla. Certiorari denied. Reported below: 624 So. 2d 266.

No. 93-6606. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1582.

No. 93-6618. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 404.

No. 93-6621. BOYENGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93-6771. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 998 F. 2d 1014.

No. 93-6791. MEIER *v.* LEVINSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 993 F. 2d 1534.

No. 93-6823. PRYOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 996 F. 2d 311.

No. 93-6837. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 79.

No. 93-6843. SIWINSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 781.

No. 93-6918. PALACIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 4 F. 3d 150.

No. 93-6923. BURNLEY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 6 F. 3d 788.

No. 93-6938. CLARKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 F. 3d 81.

No. 93-6962. MEDINA-BATISTA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 93-6990. URRUNAGA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93-7048. EVANS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 405, 618 N. E. 2d 162.

No. 93-7182. ORNELAS-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 30.

No. 93-7190. TILLMAN *v.* CONROY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 12 F. 3d 1101.

No. 93–7243. LIMPACH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93–7270. WARREN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1500.

No. 93–7319. PINER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 236.

No. 93–7320. PRANDY-BINETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 995 F. 2d 1069.

No. 93–7343. WHITAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 988.

No. 93–7356. BROWN *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 16 F. 3d 420.

No. 93–7359. MATHEWS *v.* DUGAN ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 1451, 619 N. E. 2d 420.

No. 93–7364. LEE *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 93–7367. LEWIS *v.* KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 27.

No. 93–7369. LYNCH *v.* BLODGETT, DEPUTY DIRECTOR, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 93–7370. ROBINSON *v.* WHITLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 562.

No. 93–7389. ROGERS *v.* UNITED STATES DEPARTMENT OF EDUCATION. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 22.

No. 93–7396. LAAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 93–7413. LARSEN *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 988 F. 2d 120.

No. 93–7416. Castleberry *v.* Fremont County District Court. Sup. Ct. Idaho. Certiorari denied.

No. 93–7417. Battle *v.* Barnett, Superintendent, Eastern Correctional Institution, et al. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1543.

No. 93–7418. Wehringer *v.* Brannigan. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1536.

No. 93–7437. Baby Boy Doe, a Fetus, by His Court-Appointed Guardian ad Litem, Murphy, Cook County Public Guardian *v.* Mother Doe. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 93–7439. Winters *v.* Illinois Human Rights Commission et al. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 253 Ill. 3d 1108, 667 N. E. 2d 747.

No. 93–7445. Johnston *v.* Champion, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 547.

No. 93–7450. Kelley *v.* Smith, Judge, Superior Court of Georgia, Henry County. Ct. App. Ga. Certiorari denied.

No. 93–7452. Edgeston *v.* Illinois. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 243 Ill. App. 3d 1, 611 N. E. 2d 49.

No. 93–7453. Hart *v.* Borgert, Warden. C. A. 6th Cir. Certiorari denied.

No. 93–7458. Bernadou *v.* Rollins, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 816.

No. 93–7462. Groesbeck *v.* Groesbeck. Ct. App. N. M. Certiorari denied.

No. 93–7464. Abidekun *v.* Commissioner of Social Service of the City of New York. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 591.

No. 93–7469. Hardy *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1542.

No. 93–7470. Meeks *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 867 S. W. 2d 361.

No. 93–7497. McFarland *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 4 F. 3d 1000.

No. 93–7508. Aguilar *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 113.

No. 93–7516. Gill *v.* Singletary, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 629 So. 2d 133.

No. 93–7521. Jarvis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 404.

No. 93–7528. Tisdale *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 957.

No. 93–7534. Diaz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93–7543. Webb *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 62.

No. 93–7547. Walker *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 7 F. 3d 26.

No. 93–7595. Mojica *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 12 F. 3d 217.

No. 93–7596. McConnell *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7597. McCall *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1498.

No. 93–7603. Stewart *v.* Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied.

No. 93–7613. Gray, aka Doe *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93–7624. De la Jara *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93–7629. Rendon *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 407.

No. 93–7632. Chew *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1541.

No. 93–7638. Rojas-Gonzalez *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 93–7649. Simmons *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93–7651. Nhan Kiem Tran *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 229.

No. 93–7662. Morris *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 13 F. 3d 407.

No. 93–7663. Okolie *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 3 F. 3d 287.

No. 93–7679. Rodriguez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 23.

No. 93–7688. Bartsh *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 985 F. 2d 930 and 7 F. 3d 114.

No. 93–7693. Gibbs *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 603.

No. 93–7694. Gonzales *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 103.

No. 93–7697. Evans *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 12 F. 3d 1103.

No. 93–7770. Williams *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 8 F. 3d 35.

No. 93–1130. Illinois *v.* Crane. App. Ct. Ill., 1st Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 244 Ill. App. 3d 721, 614 N. E. 2d 66.

No. 93–6817. Davis *v.* Florida. Sup. Ct. Fla.;
No. 93–6846. Osborne *v.* Georgia. Sup. Ct. Ga.;
No. 93–6974. Robinson *v.* Florida. Sup. Ct. Fla.;
No. 93–6983. Moody *v.* Texas. Ct. Crim. App. Tex.;
No. 93–7026. Pickens *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir.;
No. 93–7051. Sweet *v.* Florida. Sup. Ct. Fla.;

No. 93–7063. HUNT *v.* MARYLAND. Cir. Ct. Baltimore City, Md.;

No. 93–7079. COLLINS *v.* MARYLAND. Ct. App. Md.;

No. 93–7158. CARROLL *v.* ALABAMA. Sup. Ct. Ala.;

No. 93–7323. DUNLAP *v.* IDAHO. Sup. Ct. Idaho;

No. 93–7336. WORKMAN *v.* TENNESSEE. Ct. Crim. App. Tenn.;

No. 93–7373. DREW *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir.;

No. 93–7475. SPENCER *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir.; and

No. 93–7491. HOLLADAY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: No. 93–6817, 620 So. 2d 152; No. 93–6846, 263 Ga. 214, 430 S. E. 2d 576; No. 93–6974, 610 So. 2d 1288; No. 93–7026, 4 F. 3d 1446; No. 93–7051, 624 So. 2d 1138; No. 93–7158, 627 So. 2d 874; No. 93–7323, 125 Idaho 530, 873 P. 2d 784; No. 93–7336, 868 S. W. 2d 705; No. 93–7373, 5 F. 3d 93; No. 93–7475, 5 F. 3d 758; No. 93–7491, 629 So. 2d 673.

JUSTICE BLACKMUN, dissenting.

Adhering to my view that the death penalty cannot be imposed fairly within the constraints of our Constitution, see my dissent in *Callins* v. *Collins*, *ante*, p. 1143, I would grant the petitions for writs of certiorari and vacate the death sentences in these cases.

No. 93–7657. LAWSON *v.* DIXON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 3 F. 3d 743.

JUSTICE BLACKMUN, dissenting.

At the time of his trial, the record suggested that David Lawson suffered "significant psychopathology," anxiety, depression, hostility, and a likelihood of deficient impulse control. He generally lacked the ability to communicate with his attorney or to understand the nature and seriousness of the charges against him. He thought of suicide and once had attempted it. It is hardly surprising that he told his sentencing jury: "You think I done it, gas me." 3 F. 3d 743, 746 (CA4 1993). Lawson's counsel, taking his cues from Lawson, neither investigated nor presented any evidence of his client's mental problems, which might have established statutory and nonstatutory mitigation, see N. C. Gen. Stat. § 15A–2000(f)(2) (1988) ("The capital felony was committed while the defendant was under the influence of mental or emotional disturbance"); § 15A–2000(f)(6) ("The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired"), which, in turn, might have meant the difference between life and death.

Lawson asserts in this habeas petition that his attorney's failure to investigate or to offer mental health mitigation constituted ineffective assistance of counsel. See, *e. g., Kenley* v. *Armontrout,* 937 F. 2d 1298, 1303–1308 (CA8), cert. denied, 502 U. S. 964 (1991); *Thompson* v. *Wainwright,* 787 F. 2d 1447, 1451 (CA11 1986), cert. denied, 481 U. S. 1042 (1987). To prevail on an ineffectiveness claim, a defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland* v. *Washington,* 466 U. S. 668, 694 (1984). The Court of Appeals upheld the denial of a hearing or relief on this claim because Lawson had "failed to present clear and convincing evidence of positive and unequivocal facts which generate a substantial and legitimate doubt as to his mental capacity." 3 F. 3d, at 754.

In a related claim, Lawson argues that, regardless of his personal wishes, the Constitution's twin requirements of rationality and individualized determinations command that his jury be presented mitigating evidence. See *Klokoc* v. *State,* 589 So. 2d 219, 220 (Fla. 1991); *State* v. *Koedatich,* 112 N. J. 225, 548 A. 2d 939 (1988), cert. denied, 488 U. S. 1017 (1989); *Morrison* v. *State,* 258 Ga. 683, 687, 373 S. E. 2d 506, 509 (1988), cert. denied, 490 U. S. 1012 (1989). Finally, Lawson asserts that the instructions given his sentencing jury would lead a reasonable juror to understand that the jurors must reach unanimity on the existence of a mitigating factor before considering it, in violation of *Mills* v. *Maryland,* 486 U. S. 367 (1988), and *McKoy* v. *North Carolina,* 494 U. S. 433 (1990). See *Kubat* v. *Thieret,* 867 F. 2d 351, 373 (CA7), cert. denied, 493 U. S. 874 (1989); *Brantley* v. *State,* 262 Ga. 786, 794, 427 S. E. 2d 758, 765 (1993); *Engberg* v. *Meyer,* 820 P. 2d 70, 93 (Wyo. 1991).

Without deciding the merits of these claims, I conclude that they cast considerable doubt on the reliability and constitutionality of Lawson's sentence of death. Accordingly, even if I did not adhere to the belief that the death penalty cannot be imposed fairly within the constraints of our Constitution, see *Callins* v.

Collins, *ante*, p. 1143, I would grant Lawson's petition for certiorari to review these issues.

Rehearing Denied

No. 93-629. St. Hilaire *v.* St. Hilaire, *ante*, p. 1012;
No. 93-6085. McGee *v.* United States, *ante*, p. 1048;
No. 93-6509. Johnson *v.* City of Cheyenne, Wyoming, et al., *ante*, p. 1051;
No. 93-6587. Harrison *v.* Rogers, Director, Office of Workers' Compensation Programs, Department of Labor, et al., *ante*, p. 1053;
No. 93-6603. Marx *v.* United States, *ante*, p. 1018;
No. 93-6616. Cooper *v.* Parole and Probation Commission et al., *ante*, p. 1053;
No. 93-6637. Moses *v.* O'Dea, Warden, *ante*, p. 1054;
No. 93-6686. Hill *v.* Schoubroek et al., *ante*, p. 1055;
No. 93-6733. Johnson *v.* Shillinger, Warden, et al., *ante*, p. 1057;
No. 93-6737. Zuckerman *v.* United States, *ante*, p. 1057;
No. 93-6744. Pifer *v.* Bunnell, Warden, *ante*, p. 1057;
No. 93-6746. Crawford *v.* United States, *ante*, p. 1057;
No. 93-6789. Wilson *v.* O'Malley et al., *ante*, p. 1076;
No. 93-6854. Corethers *v.* Atlas Bonding Co. et al., *ante*, p. 1096;
No. 93-6906. Dubyak *v.* Smith et al., *ante*, p. 1096;
No. 93-6948. In re Merit, *ante*, p. 1039;
No. 93-6992. Corethers *v.* Capots et al., *ante*, p. 1098; and
No. 93-7003. O'Neill *v.* Shiplevy, Warden, *ante*, p. 1078. Petitions for rehearing denied.

No. 92-7971. Lockett *v.* Mississippi (two cases), *ante*, p. 1040;
No. 92-9070. Payton *v.* California, *ante*, p. 1040; and
No. 93-6431. Bush *v.* Singletary, Secretary, Florida Department of Corrections, *ante*, p. 1065. Petitions for rehearing denied.

Justice Blackmun, dissenting.

I would call for a response in each of these cases with a view to granting the petitions for certiorari. See my dissent in *Callins* v. *Collins*, *ante*, p. 1143.

MARCH 1, 1994

Dismissal Under Rule 46

No. 93–1088. TUCKER GUN SPECIALTY, INC. *v.* BUREAU OF ALCOHOL, TOBACCO AND FIREARMS ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 5 F. 3d 1500.

MARCH 7, 1994

Miscellaneous Orders

No. ———. B. S. ET AL. *v.* DISTRICT OF COLUMBIA ET AL.; and

No. ———. MORAN *v.* PENNSYLVANIA. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioners granted.

No. D–1355. IN RE DISBARMENT OF COHEN. Allen C. Cohen, of New York, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to practice before the Bar of this Court. The rule to show cause, heretofore issued on January 18, 1994 [*ante*, p. 1070], is hereby discharged.

No. D–1371. IN RE DISBARMENT OF MCGRATH. It is ordered that John Martin McGrath, of Merrillville, Ind., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for award of interim fees and reimbursement of expenses for the period March 1, 1993, through February 7, 1994, granted, and the Special Master is awarded a total of $202,934.15 to be paid as follows: 40% by Kansas, 40% by Colorado, and 20% by the United States. [For earlier order herein, see, *e. g.,* 507 U. S. 1049.]

No. 121, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. It is ordered that the Honorable Vincent L. McKusick, Retired Chief Justice, Supreme Judicial Court of Maine, be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit such reports as he may deem appropriate.

The compensation of the Special Master, the allowances to him, the compensation paid to his legal, technical, stenographic, and clerical assistants, the cost of printing his report and all other proper expenses, including travel expenses, shall be charged against and be borne by the parties in such proportion as the Court may hereafter direct. [For earlier order herein, see, *e. g., ante,* p. 1036.]

No. 93–377. DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK ET AL. *v.* MILHELM ATTEA & BROS., INC., ET AL. Ct. App. N. Y. [Certiorari granted, *ante,* p. 943.] Motion of Saint Regis Mohawk Tribe et al. for leave to file a supplemental brief as *amici curiae* denied.

No. 93–670. HOWLETT *v.* BIRKDALE SHIPPING CO., S. A. C. A. 3d Cir. [Certiorari granted, *ante,* p. 1039.] Motion of National Association of Waterfront Employers for leave to file a brief as *amicus curiae* granted.

No. 93–714. U. S. BANCORP MORTGAGE CO. *v.* BONNER MALL PARTNERSHIP. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1039.] Motion of American College of Real Estate Lawyers for leave to file a brief as *amicus curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 93–8040. MCFARLAND *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner to consolidate this case with No. 93–6497, *McFarland* v. *Collins, Director, Texas Department of Criminal Justice, Institutional Division* [certiorari granted, *ante,* p. 989], denied.

No. 93–1226. IN RE KUONO; and

No. 93–7461. IN RE ERWIN. Petitions for writs of mandamus denied.

No. 93–7492. IN RE GREEN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–404. Gustafson et al. *v.* Alloyd Co., Inc., fka Alloyd Holdings, Inc., et al. C. A. 7th Cir. Certiorari granted.

No. 93–823. Nebraska Department of Revenue *v.* Loewenstein. Sup. Ct. Neb. Certiorari granted. Reported below: 244 Neb. 82, 504 N. W. 2d 800.

Certiorari Denied

No. 93–717. Tyson *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 619 N. E. 2d 276.

No. 93–743. Church of Scientology of California *v.* Wollersheim. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 15 Cal. App. 4th 1426, 6 Cal. Rptr. 2d 532.

No. 93–783. Shimoda, Administrator, Oahu Community Correction Center *v.* Burgo et al. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 535.

No. 93–900. Davis *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 1 F. 3d 606.

No. 93–927. Director, Department of Community Development *v.* Guimont et al.; and

No. 93–1135. Guimont et al. *v.* Director, Department of Community Development. Sup. Ct. Wash. Certiorari denied. Reported below: 121 Wash. 2d 586, 854 P. 2d 1.

No. 93–932. Rogers *v.* Eu, Secretary of State of California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–941. City of Detroit et al. *v.* Brown, Secretary of Commerce, et al. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 1367.

No. 93–948. Okpala *v.* Immigration and Naturalization Service. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 985.

No. 93–952. ITT Consumer Financial Corp. et al. *v.* Patterson et al. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 14 Cal. App. 4th 1659, 18 Cal. Rptr. 2d 563.

No. 93-983. CLARKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93-1038. JORDAN *v.* UNITED STATES. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 346.

No. 93-1049. HARDING ET AL. *v.* WARD ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 860 S. W. 2d 280.

No. 93-1091. SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES EX REL. DOTSON, IN HER OWN BEHALF AND ON BEHALF OF DOTSON, A MINOR CHILD *v.* SERR. Sup. Ct. S. D. Certiorari denied. Reported below: 506 N. W. 2d 421.

No. 93-1107. JONES ET AL. *v.* CARLISLE, KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 3 F. 3d 945.

No. 93-1110. KENTUCKY *v.* THOMAS. Sup. Ct. Ky. Certiorari denied. Reported below: 864 S. W. 2d 252.

No. 93-1115. CONLEY ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 4 F. 3d 1200.

No. 93-1118. WESTON CONTROLS ET AL. *v.* PALMIERO (two cases). C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 812.

No. 93-1120. REMGRIT CORP. *v.* REMINGTON ARMS CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 225.

No. 93-1134. SIKKA *v.* WEST, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 998 F. 2d 1010.

No. 93-1136. TURNBULL ET AL. *v.* HOME INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 613.

No. 93-1137. OWENS-CORNING FIBERGLAS CORP. *v.* KOCHAN ET AL. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 242 Ill. App. 3d 781, 610 N. E. 2d 683.

No. 93-1142. MEMPHIS POLICE DEPARTMENT ET AL. *v.* GARNER. C. A. 6th Cir. Certiorari denied. Reported below: 8 F. 3d 358.

No. 93–1143. Gollomp et al. *v.* Trump et al. C. A. 3d Cir. Certiorari denied. Reported below: 7 F. 3d 357.

No. 93–1146. Skipper, Individually and as Temporary Administratrix of the Estate of Blueford, Deceased *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 1 F. 3d 349.

No. 93–1147. Bell *v.* Continental Bank, N. A., fka Continental Illinois National Bank & Trust Company of Chicago. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 545.

No. 93–1160. Michaels et ux., Individually and as Next Friends of Michaels et al. *v.* Prodigy Child Development Centers, Inc. Sup. Ct. Ga. Certiorari denied. Reported below: 263 Ga. XXVII, 436 S. E. 2d 227.

No. 93–1161. Ivimey et al. *v.* American Bank of Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 31 Conn. App. 921, 625 A. 2d 849.

No. 93–1164. LaPage et al. *v.* Di Costanzo et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 194 App. Div. 2d 977, 599 N. Y. S. 2d 190.

No. 93–1169. King *v.* Abrams et al. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1537.

No. 93–1195. Evans-Smith *v.* Taylor, Warden. Cir. Ct. Loudoun County, Va. Certiorari denied.

No. 93–1206. Bexar County Appraisal Review Board et al. *v.* First Baptist Church of San Antonio et al. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 846 S. W. 2d 554.

No. 93–1233. Sarin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 10 F. 3d 224.

No. 93–6537. Lawrence *v.* United States et al. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 996.

No. 93–6563. Dobles *v.* San Diego Department of Social Services. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 4th 242, 851 P. 2d 1307.

No. 93–6812. POWELL *v.* RICE, SECRETARY OF THE AIR FORCE. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93–6857. LIGGETT *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 6 F. 3d 787.

No. 93–6869. SHABAZZ *v.* LEXINGTON, OKLAHOMA, CORRECTIONAL CENTER MAILROOM SUPERVISOR ET AL. Ct. App. Okla. Certiorari denied.

No. 93–6894. HENRY *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 93–6997. BALLENTINE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 4 F. 3d 504.

No. 93–7010. MAYFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 999 F. 2d 1497.

No. 93–7013. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 1154.

No. 93–7032. TESTA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 93–7057. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93–7091. LITTLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7099. TESTA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 93–7126. BYARS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1496.

No. 93–7217. GULBENKIAN *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 996 F. 2d 318.

No. 93–7219. STOKES *v.* UNITED STATES; and
No. 93–7281. BAILEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 995.

No. 93–7300. LEVINE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 1100.

No. 93–7327. BRAY ET AL. *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 93–7337. WASHINGTON *v.* RUNYON, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied.

No. 93–7363. MOORE *v.* KAMM ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–7419. COE *v.* KINCHELOE, SUPERINTENDENT, SPRING CREEK CORRECTIONAL CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 535.

No. 93–7422. SIMPSON *v.* ROBINSON, SUPERINTENDENT, CHATHAM CORRECTIONAL UNIT. Sup. Ct. Va. Certiorari denied.

No. 93–7425. KEEGAN *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. Sup. Ct. Fla. Certiorari denied. Reported below: 621 So. 2d 1065.

No. 93–7426. PARRIS *v.* CUTHBERT ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 93–7429. POOLE *v.* CITY OF KILLEEN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 999 F. 2d 1580.

No. 93–7430. LORD *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 104.

No. 93–7434. MARTINEZ *v.* KUNIMOTO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 883.

No. 93–7436. MORGAL ET UX. *v.* PINAL COUNTY BOARD OF SUPERVISORS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 993 F. 2d 883.

No. 93–7440. HONAKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 5 F. 3d 160.

No. 93–7456. CUPPETT *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 8 F. 3d 1132.

No. 93–7457. Shelton *v.* Higgins et al. C. A. 2d Cir. Certiorari denied.

No. 93–7460. Farley *v.* County of Los Angeles. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 542.

No. 93–7463. Ransom *v.* Idaho. Sup. Ct. Idaho. Certiorari denied. Reported below: 124 Idaho 703, 864 P. 2d 149.

No. 93–7472. Poole *v.* Godinez, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 12 F. 3d 1101.

No. 93–7473. O'Brien *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 6 F. 3d 829.

No. 93–7483. Randall *v.* Singletary, Secretary, Florida Department of Corrections, et al. Sup. Ct. Fla. Certiorari denied. Reported below: 626 So. 2d 1367.

No. 93–7487. Lester *v.* Zurn Industries, Inc., et al. C. A. 6th Cir. Certiorari denied.

No. 93–7496. Thomas *v.* Graben Wood Products, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 7 F. 3d 240.

No. 93–7532. Copeland *v.* Chesapeake & Potomac Telephone Company of Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 817.

No. 93–7535. Cross *v.* Eu, Secretary of State of California. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 93–7541. Vitek *v.* St. Paul Property & Casualty. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 93–7558. Mosley *v.* County of Clark. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1226.

No. 93–7567. King *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 167.

No. 93–7584. Amann et al. *v.* Town of Stow et al. C. A. 1st Cir. Certiorari denied. Reported below: 7 F. 3d 218.

No. 93–7593. Lowe *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 43.

No. 93-7615. HESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93-7617. EBBOLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 8 F. 3d 530.

No. 93-7625. DORSEY *v.* OREGON BOARD OF PAROLE. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 535.

No. 93-7637. BROWN *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 229.

No. 93-7656. BELL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 2 F. 3d 293.

No. 93-7661. ORR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 227.

No. 93-7664. WHITLOCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 1088.

No. 93-7666. TUCKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 673.

No. 93-7667. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 228.

No. 93-7668. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 22.

No. 93-7676. QUEEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 4 F. 3d 925.

No. 93-7677. MIRANDA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1536.

No. 93-7683. PHILLIPS *v.* MARYLAND DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT BOARD OF APPEALS. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 819.

No. 93-7684. LYNN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 3 F. 3d 442.

No. 93-7687. TERNES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–7690. Clemons *v.* Rightsell et al. C. A. 10th Cir. Certiorari denied. Reported below: 2 F. 3d 1160.

No. 93–7695. Fields *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7696. Gant *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 238.

No. 93–7703. Miller *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1555.

No. 93–7705. Okegbenro *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 590.

No. 93–7707. Mitchem *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 1095.

No. 93–7708. Zirretta *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1555.

No. 93–7712. Dawn *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 12 F. 3d 1100.

No. 93–7713. Bostic *v.* Hurst et al. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 106.

No. 93–7714. Silva *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 103.

No. 93–7717. Jackson, aka Ingram *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93–7725. Colmenero-Perez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 1158.

No. 93–7729. Villanueva *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 590.

No. 93–7732. Gilbert *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7733. Jessee *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 6 F. 3d 735.

No. 93–7734. Gonzalez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 103.

No. 93–7737. Bray *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7738. Coleman *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 1480.

No. 93–7742. Hamblin et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 14 F. 3d 598.

No. 93–7743. Moreno Gomez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93–7747. Mooney *v.* United States. Ct. App. D. C. Certiorari denied.

No. 93–7748. Nwankwo *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 10 F. 3d 807.

No. 93–7758. Uduko *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 10 F. 3d 807.

No. 93–7760. Vaughn *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93–7761. Shephard *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 1095.

No. 93–7762. Scruggs *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 603.

No. 93–7781. Davis *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1109.

No. 93–7782. Hudson, aka Hudsmith *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 118.

No. 93–7784. Joe *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 8 F. 3d 1488.

No. 93–7799. Gordon *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 4 F. 3d 1567.

No. 93–799. Standard Insurance Co. *v.* Saklad. Ct. App. Ore. Motions of Health Insurance Association of America and American Council of Life Insurance et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 119 Ore. App. 91, 849 P. 2d 1150.

No. 93–839. VOSE, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS *v.* BOWLING. C. A. 1st Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 3 F. 3d 559.

No. 93–7039. RUSSELL *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir.;

No. 93–7230. TREVINO *v.* TEXAS. Ct. Crim. App. Tex.;

No. 93–7322. LEWIS *v.* OHIO. Sup. Ct. Ohio;

No. 93–7386. SMITH *v.* ARIZONA. Super. Ct. Ariz., Pima County; and

No. 93–7682. LAMBRIGHT *v.* ARIZONA. Super. Ct. Ariz., Pima County. Certiorari denied. Reported below: No. 93–7039, 998 F. 2d 1287; No. 93–7230, 864 S. W. 2d 499; No. 93–7322, 67 Ohio St. 3d 200, 616 N. E. 2d 921.

JUSTICE BLACKMUN, dissenting.

Adhering to my view that the death penalty cannot be imposed fairly within the constraints of our Constitution, see my dissent in *Callins* v. *Collins, ante,* p. 1143, I would grant certiorari and vacate the death sentences in these cases.

Rehearing Denied

No. 93–798. BUCHBINDER ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE, *ante,* p. 1047;

No. 93–6255. STEINES ET UX. *v.* INTERNAL REVENUE SERVICE, *ante,* p. 1049; and

No. 93–6652. LAFFEY *v.* INDEPENDENT SCHOOL DISTRICT #625, *ante,* p. 1054. Petitions for rehearing denied.

MARCH 14, 1994

Miscellaneous Order

No. A–758. COLLINS, WARDEN *v.* BYRD. Application to vacate the stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

JUSTICE SCALIA, dissenting.

On April 17, 1983, respondent and an accomplice entered a convenience store, emptied the cash register, and took the clerk's wedding band and watch. He then stabbed the clerk, ripped the store telephone out of the wall, and left his victim bleeding on the floor. The clerk died in a hospital a few hours later. The police arrested respondent early on the morning of April 18, after he had committed an armed robbery at another convenience store. Respondent was convicted of capital murder and sentenced to death on August 19, 1983. The sentence and conviction were affirmed on direct appeal by the Ohio Court of Appeals and the Ohio Supreme Court, see 512 N. E. 2d 611 (1987). We denied certiorari. 484 U. S. 1037 (1988). Respondent then filed a motion for state postconviction relief which was rejected by the trial and appellate courts. The Ohio Supreme Court denied review. 573 N. E. 2d 665 (1991). Respondent next filed a jurisdictional motion with the Ohio Supreme Court which alleged deficiencies in the performance of his appellate counsel on his direct appeal to the Ohio Supreme Court. That motion was rejected, see 596 N. E. 2d 472 (1992), and we recently denied an application to stay respondent's execution to consider a petition for certiorari stemming from the denial of that motion.

On March 7, 1994, only eight days before respondent's scheduled execution and six years after we denied certiorari on his direct appeal (almost 11 years after the murder for which he was tried and convicted, if anyone remembers that) respondent filed his first federal habeas petition. That formidable filing included 29 claims for relief and filled almost 300 pages. The District Court cited the substantial time gaps between respondent's conviction, rejection of his direct appeal, and denial of state postconviction relief, and rejected the habeas petition on the ground of delay. Respondent then sought a stay of execution from the Court of Appeals for the Sixth Circuit. The Sixth Circuit granted the stay, and petitioner filed this application to vacate the stay.

I have considerable sympathy for the District Court's view that respondent's habeas petition should be rejected on the ground of inexcusable delay. The decision whether to assert jurisdiction over a habeas petition calls for an exercise of the court's equitable discretion, see *Withrow* v. *Williams,* 507 U. S. 680, 715–718 (1993) (SCALIA, J., dissenting), and the petitioner's delay in filing is a factor the court may consider. Cf. *McCleskey* v. *Zant,* 499 U. S. 467, 489 (1991) ("[A] petitioner may abuse the writ by failing to raise a claim through inexcusable neglect"). We have for many purposes, however, abandoned (or forgotten) the equitable nature of habeas corpus, and under the current state of our law I cannot say that it would have been unlawful or an abuse of discretion for the Sixth Circuit to require District Court consideration of the habeas petition on its merits, and to stay the execution pending that consideration. The Sixth Circuit's order, however, did much more than that.

First, the order stayed respondent's execution for "120 days to allow for further investigation and discovery of possible habeas claims." The Court of Appeals evidently ordered this *suo motu*, with no request for such relief from respondent himself—and understandably not. Respondent has had *six years* to "investigat[e] and discover possible habeas claims," and there is no justification for another four months' delay on that score. The Court of Appeals' action tells counsel for death-row inmates that they should not only wait until the 11th hour to file their habeas petitions, thereby assuring a postponement of execution to enable consideration of the petition, but should be sure that, even then, their petitions are not fully researched and investigated, so that further postponement can be obtained for that purpose as well. Only one bent on frustrating the death penalty could think this right. The Court of Appeals can order the District Court to consider respondent's petition in due course, but its decree of a 120-day extension for further investigation and discovery (during which the already leisurely course of Ohio justice must be further delayed) seems to me a plain abuse of discretion, if not entirely ultra vires.

The Sixth Circuit also ordered that "[t]hese habeas proceedings shall be held in abeyance until the Supreme Court either grants or denies petitioner's request for certiorari, as the Court's decision will be directly relevant to the resolution of one of petitioner's habeas claims." It seems to me that whether this Court's decision will be relevant to the District Court's task, and whether the possibility of relevance on one claim is worth "h[olding] in abeyance" the entire proceeding, are questions initially to be decided by the District Court. If that court goes ahead and decides the habeas petition, the Court of Appeals has authority to delay its own *review* of that decision to await our disposition of the certiorari petition; but it has no authority to order the District Judge to delay *his* decision when that does not seem to him the better course. The same usurpation of the District Court's function is displayed in the Court of Appeals' granting (again, apparently, on its own motion) of "leave . . . to amend the petition within sixty (60) days of this order to include any newly discovered claims." Whether a motion to amend should be granted or denied is for the District Court to decide, subject to reversal only for abuse of discretion. See *Foman* v. *Davis*, 371 U. S. 178, 182 (1962); *Duchon* v. *Cajon Co.*, 791 F. 2d 43, 48 (CA6 1986); 28 U. S. C. § 2242 (application for habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions"). The Court of Appeals' function is to review decisions of the District Court, not to establish district judges' timetables or to make discretionary determinations prematurely and in their stead.

I would grant petitioner's application to vacate the Sixth Circuit's stay. Since, as I have said, the Sixth Circuit could have entered a more limited stay for a more limited purpose, I would stay the execution for so long as is needed to permit the Sixth Circuit's reconsideration.

March 21, 1994

Certiorari Granted—Vacated and Remanded

No. 93–6741. Reed *v.* United States. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the United States filed January 14, 1994. Reported below: 995 F. 2d 1299.

Miscellaneous Orders

No. — — —. Sam *v.* Pennsylvania. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. D–711. In re Disbarment of Harper. Disbarment entered. [For earlier order herein, see 486 U. S. 1030.]

No. D–1372. In re Disbarment of Smith. It is ordered that Michael I. Smith, of Washington, D. C., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1373. In re Disbarment of Swerdlow. It is ordered that Paul Swerdlow, of Media, Pa., be suspended from the practice of law in this Court and that a rule issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Joint motion to refer motions for leave to file amended pleadings to the Special Master granted. Motion of Nebraska for leave to file an amended petition referred to the Special Master for his recommendation. Motion of Wyoming for leave to file amended counterclaims and cross-claims referred to the Special Master for his recommendation. The Special Master is requested to file his report and recommendation on the motions to amend within 120 days. [For earlier order herein, see, *e. g., ante,* p. 941.]

No. 92-2058. HAWAIIAN AIRLINES, INC. *v.* NORRIS; and FINAZZO ET AL. *v.* NORRIS. Sup. Ct. Haw. [Certiorari granted, *ante,* p. 1083.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 92-8556. NICHOLS *v.* UNITED STATES. C. A. 6th Cir. [Certiorari granted, 509 U. S. 953.] Motion of petitioner for compensation in excess of the statutory limitation denied.

No. 93-609. MORGAN STANLEY & CO. INC. ET AL. *v.* PACIFIC MUTUAL LIFE INSURANCE CO. ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 1039.] Motion of respondents for divided argument granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 93-744. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* GREENWICH COLLIERIES ET AL.; and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR *v.* MAHER TERMINALS, INC., ET AL. C. A. 3d Cir. [Certiorari granted, *ante,* p. 1068.] Motions of respondents Maher Terminals, Inc., and Pasqualina Santoro for divided argument denied.

No. 93-880. MADSEN ET AL. *v.* WOMEN'S HEALTH CENTER, INC., ET AL. Sup. Ct. Fla. [Certiorari granted, *ante,* p. 1084.] Motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief as *amicus curiae* granted.

No. 93–1151. FEDERAL ELECTION COMMISSION *v.* NRA POLITICAL VICTORY FUND ET AL. C. A. D. C. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States with respect to the following question: "Whether the Federal Election Commission has statutory authority to represent itself in this case in this Court?" JUSTICE GINSBURG took no part in the consideration or decision of this order.

No. 93–1222. GARCIA ET AL. *v.* SPUN STEAK CO. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 93–8024. IN RE COFIELD; and
No. 93–8058. IN RE SAMMONS. Petitions for writs of habeas corpus denied.

No. 93–7511. IN RE GATES; and
No. 93–7573. IN RE GALU. Petitions for writs of mandamus denied.

No. 93–1144. IN RE REINERT & DUREE ET AL. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 93–1001. ALLIED-BRUCE TERMINIX COS., INC., ET AL. *v.* DOBSON ET AL. Sup. Ct. Ala. Motion of Alabama Water and Sewer Institute et al. for leave to file a brief as *amici curiae* granted. Certiorari granted. Reported below: 628 So. 2d 354.

No. 93–1197. HESS ET AL. *v.* PORT AUTHORITY TRANS-HUDSON CORPORATION. C. A. 3d Cir. Certiorari granted limited to the following question: "Whether Port Authority Trans-Hudson Corporation, a wholly owned subsidiary of a bistate agency created by interstate compact, is entitled to sovereign immunity from suit in federal court under the Eleventh Amendment?" Reported below: 8 F. 3d 811.

Certiorari Denied

No. 93–708. APPLEWHITE *v.* UNITED STATES AIR FORCE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 995 F. 2d 997.

No. 93–856. TICOR TITLE INSURANCE CO. ET AL. *v.* FEDERAL TRADE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 998 F. 2d 1129.

No. 93-868. IDAHO *v.* CURL ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 125 Idaho 224, 869 P. 2d 224.

No. 93-915. LADWIG *v.* KENTUCKY. Cir. Ct. Ky., Kenton County. Certiorari denied.

No. 93-939. MCGINNIS ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 2 F. 3d 548.

No. 93-945. PETROCHEM INSULATION, INC. *v.* UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 29.

No. 93-946. WULIGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 981 F. 2d 1497.

No. 93-950. RUTLEDGE *v.* REICH, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 996 F. 2d 1232.

No. 93-955. BEESON ET AL. *v.* PHILLIPS, KING & SMITH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 611.

No. 93-971. BLODGETT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* JEFFRIES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 1180.

No. 93-984. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 30.

No. 93-1002. CREACIONES VIVIANA LTDA. ET AL. *v.* UNITED STATES;

No. 93-1018. ABUCHAIBE HNOS. LTDA. *v.* UNITED STATES ET AL.; and ABUCHAIBE HNOS. LTDA. *v.* BANCO ATLANTICO S. A. ET AL.;

No. 93-1019. COMERCIAL SAMORA LTDA. *v.* UNITED STATES ET AL.; and COMERCIAL SAMORA LTDA. *v.* BANCO ATLANTICO S. A. ET AL.;

No. 93-1020. ORGANIZACION JD LTDA. ET AL. *v.* UNITED STATES ET AL. (two cases);

No. 93-1061. INDUSTRIAS MARATHON LTDA. *v.* UNITED STATES ET AL.; and INDUSTRIAS MARATHON LTDA. *v.* MANUFACTURERS HANOVER TRUST CO. ET AL.; and

No. 93–1073. Manufacturera del Atlantico Ltda. et al. *v.* United States et al.; and Manufacturera del Atlantico Ltda. et al. *v.* Manufacturers Hanover Trust Co. et al. C. A. 2d Cir. Certiorari denied. Reported below: No. 93–1002 and Nos. 93–1018, 93–1019, 93–1020, 93–1061, and 93–1073 (first cases), 6 F. 3d 37.

No. 93–1006. Higareda et al. *v.* United States Postal Service. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1495.

No. 93–1022. Rexroat *v.* United States. Ct. Mil. App. Certiorari denied. Reported below: 38 M. J. 292.

No. 93–1025. Nickerson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 1400.

No. 93–1029. Wilson et al. *v.* Department of Agriculture. C. A. 5th Cir. Certiorari denied. Reported below: 991 F. 2d 1211.

No. 93–1043. Veldhuizen *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 93–1052. Fleming *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1542.

No. 93–1056. DiGian *v.* Clinton. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 778.

No. 93–1086. Walsh *v.* Ward; and
No. 93–7548. Ward *v.* Walsh. C. A. 9th Cir. Certiorari denied. Reported below: 1 F. 3d 873.

No. 93–1119. In re Geschke et al. C. A. 7th Cir. Certiorari denied.

No. 93–1150. Carroll *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 93–1153. Mixon *v.* Franklin County, Idaho, et al. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 538.

No. 93–1154. Beer, Manager of Revenue, City and County of Denver, Colorado *v.* Continental Airlines

Inc. et al. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 811.

No. 93–1157. Sereno *v.* Pacumio et al. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 29.

No. 93–1158. Mutual Life Insurance Company of New York *v.* Davis et al. C. A. 6th Cir. Certiorari denied. Reported below: 6 F. 3d 367.

No. 93–1162. Railway Labor Executives' Assn. et al. *v.* Southern Pacific Transportation Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 7 F. 3d 902.

No. 93–1165. Persico et al. *v.* Villa, Personally and as Mayor of the City of Amsterdam. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1537.

No. 93–1166. Midwest Pride V, Inc., et al. *v.* Ward, Ross County Prosecuting Attorney. Ct. App. Ohio, Ross County. Certiorari denied.

No. 93–1167. Hickle *v.* American Service Corporation of South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 312 S. C. 520, 435 S. E. 2d 870.

No. 93–1168. Owen *v.* Chevron, U. S. A., Inc. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 20.

No. 93–1172. Elkins et al. *v.* Richardson-Merrell, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 8 F. 3d 1068.

No. 93–1174. Martinez et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 1494.

No. 93–1175. Benson *v.* City of Helena et al. Sup. Ct. Mont. Certiorari denied. Reported below: 261 Mont. 536, 868 P. 2d 641.

No. 93–1176. Fontenot *v.* Texas et al. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 991.

No. 93–1177. Fisher et al. *v.* Trainor et al. C. A. 1st Cir. Certiorari denied. Reported below: 7 F. 3d 218.

No. 93–1178. Gerads et ux. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 1255.

No. 93–1179. HAFIZ *v.* ELECTRONIC DATA SYSTEMS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 996 F. 2d 1215.

No. 93–1180. AUTO CLUB INSURANCE ASSN. *v.* PENTWATER WIRE PRODUCTS, INC., ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 443 Mich. 358, 505 N. W. 2d 820.

No. 93–1181. LORAIN COUNTY COURT OF COMMON PLEAS *v.* MALINOVSKY. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 1263.

No. 93–1183. BILLHEIMER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 418 Pa. Super. 626, 606 A. 2d 1225.

No. 93–1184. OHIO *v.* LESSIN. Sup. Ct. Ohio. Certiorari denied. Reported below: 67 Ohio St. 3d 487, 620 N. E. 2d 72.

No. 93–1185. WILLIAMS *v.* SALTZSTEIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 290.

No. 93–1189. HANJIN CONTAINER LINES, INC. *v.* TOKIO FIRE & MARINE INS. CO., LTD., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 F. 3d 1427.

No. 93–1190. NOBLE *v.* WILKINSON, DIRECTOR, DEPARTMENT OF REHABILITATION AND CORRECTIONS OF OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 109.

No. 93–1191. EZZELL *v.* NEW HAMPSHIRE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 234.

No. 93–1192. WALTERS, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF WALTERS, A MINOR *v.* CITY OF ALLENTOWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 9 F. 3d 1541.

No. 93–1194. BINKLEY *v.* CITY OF LONG BEACH ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 16 Cal. App. 4th 1795, 20 Cal. Rptr. 2d 903.

No. 93–1200. ALLSTATE INSURANCE CO. *v.* KARL, JUDGE, CIRCUIT COURT FOR MARSHALL COUNTY, WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 190 W. Va. 176, 437 S. E. 2d 749.

No. 93-1202. Brunwasser *v.* Steiner. Sup. Ct. Pa. Certiorari denied.

No. 93-1203. Tioga Pines Living Center, Inc., et al. *v.* Indiana State Board of Public Welfare et al. Sup. Ct. Ind. Certiorari denied. Reported below: 622 N. E. 2d 935.

No. 93-1205. Tillimon *v.* Ohio. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 93-1207. Gonzales et al. *v.* Carter et al. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 93-1208. McKinney et ux. *v.* Dick et ux. Ct. App. Kan. Certiorari denied. Reported below: 18 Kan. App. 2d xxxiv, 857 P. 2d 679.

No. 93-1209. Penrod Drilling Corp. *v.* Coats. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 877.

No. 93-1211. Janosik *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 11 F. 3d 1070.

No. 93-1214. Bourexis *v.* Carroll County Narcotics Task Force et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 96 Md. App. 459, 625 A. 2d 391.

No. 93-1216. Darby Borough et al. *v.* Cain, Executor of the Estate of Cain, Deceased. C. A. 3d Cir. Certiorari denied. Reported below: 7 F. 3d 377.

No. 93-1217. D'Avanzo *v.* Citicorp Mortgage, Inc. App. Ct. Conn. Certiorari denied. Reported below: 31 Conn. App. 621, 626 A. 2d 800.

No. 93-1219. Wilson *v.* Southern Railway Co. et al. Ct. App. Ga. Certiorari denied. Reported below: 208 Ga. App. 598, 431 S. E. 2d 383.

No. 93-1220. Grace et al. *v.* Morgan et al. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 23.

No. 93-1221. Ailor et al. *v.* Pension Benefit Guaranty Corporation et al. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 238.

No. 93–1223. Sokaogon Chippewa Community *v.* Exxon Corp. et al. C. A. 7th Cir. Certiorari denied. Reported below: 2 F. 3d 219.

No. 93–1225. Vickroy *v.* Rockwell International Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 996 F. 2d 1229.

No. 93–1227. Compression Polymers, Inc., et al. *v.* Santana Products, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 152.

No. 93–1228. Burghart *v.* Landau et al. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1538.

No. 93–1232. Kalejs *v.* Immigration and Naturalization Service. C. A. 7th Cir. Certiorari denied. Reported below: 10 F. 3d 441.

No. 93–1234. Monin *v.* Monin et al. Ct. App. Ky. Certiorari denied.

No. 93–1235. Austin et al. *v.* United Parcel Service. Sup. Ct. Vt. Certiorari denied. Reported below: 161 Vt. 642, 633 A. 2d 714.

No. 93–1236. Cordero *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 852 S. W. 2d 736.

No. 93–1237. Quisenberry *v.* Stelly-Hoven, Inc., et al. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 616 So. 2d 1232.

No. 93–1239. Tucker *v.* Pace Investments et al. App. Ct. Conn. Certiorari denied. Reported below: 32 Conn. App. 384, 629 A. 2d 470.

No. 93–1243. Grace et al. *v.* Tabron. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 147.

No. 93–1244. Fitzpatrick et al. *v.* Mackey et al. C. A. 6th Cir. Certiorari denied. Reported below: 7 F. 3d 233.

No. 93–1247. Collier et al. *v.* Marshall, Dennehey, Warner, Coleman & Goggin et al. C. A. 3d Cir. Certiorari denied.

No. 93–1249. PYLE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 314 Ark. 165, 862 S. W. 2d 823.

No. 93–1253. SANTOS *v.* RUNYON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 539.

No. 93–1261. MAGNUSON, DBA YOSHIKO'S SAUNA *v.* CITY OF MINNEAPOLIS. Ct. App. Minn. Certiorari denied. Reported below: 504 N. W. 2d 520.

No. 93–1267. KING *v.* BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 2 F. 3d 406.

No. 93–1277. MOHAM *v.* STEEGO CORP. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 873.

No. 93–1282. AMERICAN HOME PRODUCTS CORP. ET AL. *v.* MYLAN LABORATORIES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 1130.

No. 93–1290. LOS ANGELES LAND CO. *v.* BRUNSWICK CORP. C. A. 9th Cir. Certiorari denied. Reported below: 6 F. 3d 1422.

No. 93–1324. STOCKSTILL *v.* SHELL OIL CO. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 868.

No. 93–1355. CRISLER *v.* FRANK ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 114.

No. 93–6570. VANDYKE *v.* DOUGLAS VANDYKE COAL CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 993 F. 2d 1541.

No. 93–6619. EISENSTEIN *v.* HABER ET AL. C. A. 2d Cir. Certiorari denied.

No. 93–6665. GAUDREAULT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 7 F. 3d 218.

No. 93–6727. CASEL *v.* UNITED STATES; and
No. 93–6731. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 1299.

No. 93–6772. KENNEDY *v.* STEEL WAREHOUSE CO., INC. C. A. 7th Cir. Certiorari denied. Reported below: 991 F. 2d 799.

No. 93–6830. GRANT *v.* KAISER PERMANENTE MEDICAL CENTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 543.

No. 93–6848. FRANCO *v.* MYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 542.

No. 93–6986. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 8 F. 3d 814.

No. 93–7027. MARSHALL *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 453.

No. 93–7056. RODRIGUEZ DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 998 F. 2d 1020.

No. 93–7108. SEMIEN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 3 F. 3d 440.

No. 93–7136. SMITH *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 5 F. 3d 235.

No. 93–7139. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 1 F. 3d 1566.

No. 93–7155. LARA-ACOSTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 542.

No. 93–7246. MERGERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 4 F. 3d 337.

No. 93–7321. MAY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 334 N. C. 609, 434 S. E. 2d 180.

No. 93–7353. BOLINDER *v.* BATEMAN ET AL. Ct. App. Utah. Certiorari denied.

No. 93–7443. IZARD, AKA LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 11 F. 3d 167.

No. 93–7484. NEWSOME *v.* PETERS, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 93–7485. McCULLOUGH *v.* WILLIAMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 93–7493. SHARKEY *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 11 F. 3d 1070.

No. 93–7515. HARRIS *v.* UNITED STATES; and
No. 93–7525. THURMOND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 F. 3d 947.

No. 93–7518. GREEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 93–7522. LEBEAU *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 93–7523. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 93–7530. OMOIKE *v.* LOUISIANA STATE UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 102.

No. 93–7531. BARTEL *v.* GARRETT. C. A. 4th Cir. Certiorari denied. Reported below: 4 F. 3d 984.

No. 93–7533. AZIZ *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 93–7539. COOPER *v.* GILPIN ET AL. C. A. 8th Cir. Certiorari denied.

No. 93–7540. BLACK *v.* MANN. C. A. 2d Cir. Certiorari denied.

No. 93–7542. YEGGY *v.* CITY OF IOWA CITY, IOWA, ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 507 N. W. 2d 417.

No. 93–7544. TOWNES *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 820.

No. 93–7551. COTTON *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 5 F. 3d 545.

No. 93–7552. MONROE *v.* CITY OF KENT. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1552.

No. 93–7557. PEARCE *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 93–7559. PURIFOY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 195 App. Div. 2d 954, 602 N. Y. S. 2d 566.

No. 93–7561. MOORE *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–7562. MCCONNELL *v.* ARMONTROUT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 14 F. 3d 609.

No. 93–7566. CHORNEY *v.* WEINGARTEN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 7 F. 3d 218.

No. 93–7570. SIPOS *v.* WILLIAMSON. C. A. 9th Cir. Certiorari denied. Reported below: 995 F. 2d 233.

No. 93–7571. KINES *v.* GODINEZ, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 7 F. 3d 674.

No. 93–7572. GENNINGER *v.* BOSTON MAGAZINE, INC., ET AL. App. Ct. Mass. Certiorari denied. Reported below: 35 Mass. App. 1110, 622 N. E. 2d 286.

No. 93–7574. ISTVAN *v.* WILLOUGHBY OF CHEVY CHASE CONDOMINIUM COUNCIL OF UNIT OWNERS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 224.

No. 93–7575. FRANKLIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–7578. BRIBIESCA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93–7587. BURTON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–7588. DICESARE *v.* STOUT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 992 F. 2d 1222.

No. 93–7592. CLOUTIER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 156 Ill. 2d 483, 622 N. E. 2d 774.

No. 93-7602. SAWICKI *v.* KAISER FOUNDATION HOSPITALS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 93-7605. WOLSTONE *v.* UNEMPLOYMENT APPEALS COMMISSION ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 93-7606. SWINEY *v.* CORRECTIONAL HEALTH CARE, INC., ET AL. C. A. 11th Cir. Certiorari denied.

No. 93-7611. FOX *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 314 Ark. 523, 863 S. W. 2d 568.

No. 93-7616. GONZALEZ *v.* OCEAN COUNTY BOARD OF SOCIAL SERVICES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 93-7618. CHRISTIE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 506 N. W. 2d 293.

No. 93-7619. TRIPATI *v.* ARPAIO, SHERIFF, MARICOPA COUNTY. Sup. Ct. Ariz. Certiorari denied.

No. 93-7622. CARTER *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93-7626. NEWSOME *v.* FLOYD WEST & CO. C. A. 5th Cir. Certiorari denied. Reported below: 5 F. 3d 529.

No. 93-7630. O'DELL *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 70 Wash. App. 560, 854 P. 2d 1096.

No. 93-7633. SERRA *v.* TOOMBS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 4 F. 3d 1348.

No. 93-7639. LOTT *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1544.

No. 93-7642. SCHAFF *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 248 Ill. App. 3d 547, 618 N. E. 2d 566.

No. 93-7644. ROLLINS ET UX. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 21.

No. 93–7645. JAE *v.* ROWLEY, PRESIDENT JUDGE, SUPERIOR COURT OF PENNSYLVANIA, WESTERN DISTRICT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 93–7646. KOWALSKI *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. Sup. Ct. Ore. Certiorari denied.

No. 93–7650. LINDSEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 93–7655. DAVIS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 992 F. 2d 327.

No. 93–7658. KLEINSCHMIDT *v.* GATOR OFFICE SUPPLY & FURNITURE, INC., ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 621 So. 2d 549.

No. 93–7660. GREEN *v.* LINDSEY. C. A. 2d Cir. Certiorari denied. Reported below: 9 F. 3d 1537.

No. 93–7673. BLACKSTON *v.* SKARBNIK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 46.

No. 93–7674. WILLIAMS *v.* ATLANTA JOURNAL & CONSTITUTION, INC., ET AL. Sup. Ct. Ga. Certiorari denied.

No. 93–7675. YSARRAS RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 31.

No. 93–7719. PARKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 115.

No. 93–7749. O'MURCHU *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 7 F. 3d 218.

No. 93–7763. LEE *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 32 Conn. App. 84, 628 A. 2d 1318.

No. 93–7769. REED *v.* COLLINS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 93–7779. ANTHONY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 1559.

No. 93-7786. WOOTEN *v.* ELLINGSWORTH ET AL. C. A. 3d Cir. Certiorari denied.

No. 93-7787. STEWART *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 93-7788. HOFFMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 49.

No. 93-7793. SCOTT *v.* LUSTER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 999 F. 2d 544.

No. 93-7796. CAMPBELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 93-7797. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 F. 3d 821.

No. 93-7798. SAMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 F. 3d 602.

No. 93-7801. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 8 F. 3d 769.

No. 93-7802. RUVALCABA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 41.

No. 93-7803. LOYA-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93-7804. OMENWU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 F. 3d 1110.

No. 93-7807. PANO *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 11 F. 3d 1070.

No. 93-7810. SNELL *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 999 F. 2d 548.

No. 93-7811. SINCLAIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93-7812. SHEPHARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 4 F. 3d 647.

No. 93–7817. ROBERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 6 F. 3d 1088.

No. 93–7818. SAMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 109.

No. 93–7825. GILLESPIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 F. 3d 1557.

No. 93–7833. MYLAR *v.* WHITE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 93–7840. HARDIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 1548.

No. 93–7842. RANDEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 8 F. 3d 1526.

No. 93–7847. BORDENAVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 1558.

No. 93–7848. BENNET *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 215.

No. 93–7850. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7852. HOOKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 1546.

No. 93–7853. GOODWIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 8 F. 3d 71.

No. 93–7854. CHAVEZ-VERNAZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 F. 3d 1091.

No. 93–7855. BENSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 F. 3d 1554.

No. 93–7857. AFILA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 15 F. 3d 1096.

No. 93–7858. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 1547.

No. 93–7863. BUTLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 F. 3d 808.

No. 93-7865. Valdes *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 9 F. 3d 1558.

No. 93-7867. Simpson *v.* Murray, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 7 F. 3d 226.

No. 93-7870. Soliz Cano *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 54.

No. 93-7873. Preston *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1545.

No. 93-7874. Lucious *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 104.

No. 93-7876. Rollins et ux. *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied.

No. 93-7878. Kinslow *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 5 F. 3d 542.

No. 93-7880. Keffalas *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 780.

No. 93-7888. Olness *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 9 F. 3d 716.

No. 93-7889. Outlaw *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 632 A. 2d 408.

No. 93-7890. Resko *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 14 F. 3d 50.

No. 93-7894. Fayne *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 9 F. 3d 1549.

No. 93-7895. Ibarra *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 3 F. 3d 1333.

No. 93-7896. St. Fleur *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 10 F. 3d 13.

No. 93-7897. Hearns *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 215.

No. 93-7898. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 5 F. 3d 1497.

No. 93-7908. SHYLLON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 10 F. 3d 1.

No. 93-7910. ARNOLD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 944 F. 2d 1223 and 12 F. 3d 599.

No. 93-7911. BEHLKE *v.* SULLIVAN, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 6 F. 3d 486.

No. 93-7913. MANDEL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 1426.

No. 93-7915. NURURDIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 8 F. 3d 1187.

No. 93-7921. MALIK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 6 F. 3d 781.

No. 93-7926. CAMPBELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 14 F. 3d 53.

No. 93-7930. COLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 F. 3d 390.

No. 93-7931. CATO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 1546.

No. 93-7937. HOSKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 F. 3d 328.

No. 93-7939. PELTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 F. 3d 206.

No. 93-7943. PEGUERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 9 F. 3d 1547.

No. 93-7944. GOMEZ-RENDON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 F. 3d 591.

No. 93-7945. JACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 8 F. 3d 21.

No. 93-7947. COHRON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 1 F. 3d 1566.

No. 93–7953. RAMOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 F. 3d 215.

No. 93–7954. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1545.

No. 93–7956. SNELLING *v.* CHRYSLER MOTORS CORP. ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 859 S. W. 2d 755.

No. 93–7960. WARE *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 93–7968. BUCHNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 7 F. 3d 1149.

No. 93–7969. CURTSINGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 F. 3d 110.

No. 93–7975. NWIZZU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 16 F. 3d 406.

No. 93–7976. NASON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 9 F. 3d 155.

No. 93–7977. RECTOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 F. 3d 1545.

No. 93–7980. MAYS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 F. 3d 1222.

No. 93–7987. FACCIO-LABOY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 8 F. 3d 809.

No. 93–496. STEVENS ET AL. *v.* CITY OF CANNON BEACH ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 317 Ore. 131, 854 P. 2d 449.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR joins, dissenting.

This is a suit by owners of a parcel of beachfront property against the city of Cannon Beach and the State of Oregon. Petitioners purchased the property in 1957. In 1989, they sought a building permit for construction of a seawall on the dry-sand portion of the property. When the permit was denied, they brought this inverse condemnation action against the city in the

Circuit Court of Clatsop County, alleging a taking in violation of the Fifth and Fourteenth Amendments. That court dismissed the complaint for failure to state a claim pursuant to Oregon Rule of Civil Procedure 21A(8), on the ground that under *State ex rel. Thornton* v. *Hay,* 254 Ore. 584, 462 P. 2d 671 (1969), petitioners never possessed the right to obstruct public access to the dry-sand portion of the property. App. to Pet. for Cert. C–22 to C–25. The Court of Appeals, 114 Ore. App. 457, 835 P. 2d 940 (1992), and then the Supreme Court of Oregon, 317 Ore. 131, 854 P. 2d 449 (1993), both relying on *Thornton,* affirmed. The landowners have petitioned this Court for writ of certiorari to the Supreme Court of Oregon. They allege an unconstitutional taking of property without just compensation, and a denial of due process of law.

In order to clarify the nature of the constitutional questions that the case presents, a brief sketch of Oregon case law involving beachfront property is necessary.

I

In 1969, the State of Oregon brought suit to enjoin owners of certain beachfront tourist facilities from constructing improvements on the "dry-sand" portion of their properties. The trial court granted an injunction. *State ex rel. Thornton* v. *Hay, supra.* In defending that judgment on appeal to the Supreme Court of Oregon, the State briefed and argued its case on the theory that by implied dedication or prescriptive easement the public had acquired the right to use the dry-sand area for recreational purposes, precluding development. The Supreme Court of Oregon found "a better legal basis" for affirming the decision and decided the case on an entirely different theory:

> "The most cogent basis for the decision in this case is the English doctrine of custom. Strictly construed, prescription applies only to the specific tract of land before the court, and doubtful prescription cases could fill the courts for years with tract-by-tract litigation. An established custom, on the other hand, can be proven with reference to a larger region. Ocean-front lands from the northern to the southern border of the state ought to be treated uniformly." *Id.,* at 595, 462 P. 2d, at 676.

The court set forth what it said were the seven elements of the doctrine of custom[1] and concluded that "[t]he custom of the people of Oregon to use the dry-sand area of the beaches for public recreational purposes meets every one of Blackstone's requisites." *Id.*, at 597, 462 P. 2d, at 677. The court affirmed the injunction, saying that "it takes from no man anything which he has had a legitimate reason to regard as exclusively his." *Id.*, at 599, 462 P. 2d, at 678. Thus, *Thornton* declared as the customary law of Oregon the proposition that the public enjoys a right of recreational use of all dry-sand beach, which denies property owners development rights.

Or so it seemed until 1989. That year, the Supreme Court of Oregon revisited the issue of dry-sand beach in the case of *McDonald* v. *Halvorson*, 308 Ore. 340, 780 P. 2d 714 (1989). There, the beachfront property owners who were plaintiffs sought a judicial declaration that their property included a portion of dry-sand area adjacent to a cove of the Pacific Ocean. With such a declaration in place, they hoped to gain access (under *Thornton*, as members of the public) to the remaining dry-sand area of the cove lying on property to which the defendants held record title. The State intervened to assert the public's right (under the doctrine of custom) to use the dry-sand area of the cove, and to enjoin defendants from interfering with that right. The Supreme Court of Oregon held that the public had no right to recreational use of the dry-sand portions of the cove beach. 308 Ore., at 360, 780 P. 2d, at 724. *McDonald* noted what it called inconsistencies in *Thornton*, 308 Ore., at 358–359, 780 P. 2d, at 723, and resolved them by stating that "nothing in *[Thornton]* fairly can be read to have established beyond dispute a public claim by virtue of 'custom' to the right to recreational use of the entire Oregon coast." *Id.*, at 359, 780 P. 2d, at 724. "[T]here may also be [dry-sand] areas," the court said, "to which the doctrine of custom is not applicable." *Ibid.*[2] The court noted that "[t]here [was] no testimony in this record showing customary use of the narrow beach on the bank of the cove. . . . The doctrine of custom announced in *[Thornton]* simply does not apply to this controversy. The public has no right to recreational use of the [dry-sand beach area of the cove] because there is no factual predicate for application of the doctrine." *Id.*, at 360, 780 P. 2d, at 724.

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[1] The Supreme Court of Oregon described the English doctrine of custom as applying to land used in a certain manner (1) so long that the mind runneth not to the contrary; (2) without interruption; (3) peaceably; (4) where the public use has been appropriate to the land and the usages of the community; (5) where the boundary is certain; (6) where the custom is obligatory (not left up to individual landowners as to whether they will recognize the public's right to access); and (7) where the custom is not repugnant to or inconsistent with other customs or laws.

With *McDonald* now the leading case interpreting the law of custom, petitioners here brought their takings challenge in the Oregon state trial court. As recited above, that court dismissed for failure to state a claim upon which relief could be granted, saying that "*[Thornton]* teaches us that ocean front owners cannot enclose or develop the dry sand beach area so as to exclude the public therefrom. . . . [B]ecause of the public's ancient and continued use of the dry sand area on the Oregon coast . . . its future use thereof cannot be curtailed or limited." App. to Pet. for Cert. C–24. The trial court did not cite *McDonald,* and its peremptory dismissal prevented petitioners from doing what *McDonald* clearly contemplated their doing: providing the factual predicate for their challenge through testimony of customary use showing that their property is one of those areas "to which the doctrine of custom [was] not applicable." *McDonald, supra,* at 359, 780 P. 2d, at 724. Moreover, when petitioners attempted to introduce such factual material on appeal they were rebuffed on the ground that appeal was confined to the purely legal question whether the complaint stated a claim under Oregon law. App. to Pet. for Cert. I–197 to I–198 (Tr., Mar. 3, 1993); see also *id.*, at I–185 to I–190.

In its decision here, the Supreme Court of Oregon quoted portions of *Thornton*'s sweeping language appearing to declare the law of custom for all the Oregon shore. But it then read *Thornton* (which also originated in a dispute over property in Cannon Beach) to have said that the "historic public use *of the dry sand area of Cannon Beach* met [Blackstone's] requirements." 317

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[2] While narrowing *Thornton* in this respect, *McDonald* seemingly expanded it in another: "'Dry-sand area' as used in *[Thornton]* can apply equally to gravel beaches, beaches strewn with or even made up of boulders, and other areas adjacent to the foreshore which, like the beach in *[Thornton],* have long been used for recreational purposes by the general public." 308 Ore., at 359, 780 P. 2d, at 724.

Ore., at 140, 854 P. 2d, at 454 (emphasis added).[3] The court then framed the issue as the continuing validity of *Thornton* in light of *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003 (1992). The court quoted our opinion in *Lucas:* "'Any limitation so severe [as to prohibit all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles *of the State's law of property* and nuisance already place upon land ownership.'" 317 Ore., at 142, 854 P. 2d, at 456 (quoting *Lucas, supra,* at 1029, (emphasis added by the Oregon court). The court held that the doctrine of custom was just such a background principle of Oregon property law, and that petitioners never had the property interests that they claim were taken by respondents' decisions and regulations. 317 Ore., at 143, 854 P. 2d, at 456. It then affirmed the dismissal.

II

As a general matter, the Constitution leaves the law of real property to the States. But just as a State may not deny rights protected under the Federal Constitution through pretextual procedural rulings, see *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449, 455–458 (1958), neither may it do so by invoking nonexistent rules of state substantive law. Our opinion in *Lucas,* for example, would be a nullity if anything that a state court chooses to denominate "background law"—regardless of whether it is really such—could eliminate property rights. "[A] State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all." *Hughes* v. *Washington,* 389 U. S. 290, 296–297 (1967) (Stewart, J., concurring). No more by judicial decree than by legislative fiat may a State transform private property into public property without compensation. *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith,* 449 U. S. 155, 164 (1980). See also *Lucas, supra,* at 1031. Since opening private property to public use constitutes a taking, see *Nollan* v. *California Coastal Comm'n,* 483 U. S. 825, 831 (1987); *Kaiser Aetna* v. *United States,* 444 U. S. 164, 178 (1979), if it cannot fairly be said that an Oregon doctrine of custom deprived Cannon Beach property owners of their rights to exclude others from the dry sand, then the decision now before us has effected an uncompensated taking.

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[3] This reading of *Thornton* is in my view unsupportable. *Thornton* did not limit itself to "the dry sand area of Cannon Beach." On the contrary, *Thornton* includes the following statements: "Ocean-front lands from the northern to the southern border of the state ought to be treated uniformly." 254 Ore., at 595, 462 P. 2d, at 676. "This case deals solely with the dry-sand area along the Pacific shore . . . ." *Ibid.* "The custom of the people of Oregon to use the dry-sand area of the beaches for public recreational purposes meets every one of Blackstone's requisites." *Id.,* at 597, 462 P. 2d, at 677. "[T]he custom of the inhabitants of Oregon and of visitors in the state to use the dry sand as a public recreation area is so notorious that notice of the custom . . . must be presumed." *Id.,* at 598, 462 P. 2d, at 678. The passage in which *Thornton* actually applies Blackstone's seven-factor test contains not a single mention of the city of Cannon Beach. *Id.,* at 595–597, 462 P. 2d, at 677.

To say that this case raises a serious Fifth Amendment takings issue is an understatement. The issue is serious in the sense that it involves a holding of questionable constitutionality; and it is serious in the sense that the landgrab (if there is one) may run the entire length of the Oregon coast.[4] It is by no means clear that the facts—either as to the entire Oregon coast, or as to the small segment at issue here—meet the requirements for the English doctrine of custom. The requirements set forth by Blackstone included, *inter alia,* that the public right of access be exercised without interruption, and that the custom be obligatory, *i. e.,* in the present context that it not be left to the option of each landowner whether he will recognize the public's right to go on the dry-sand area for recreational purposes. In *Thornton,* however, the Supreme Court of Oregon determined the historical existence of these fact-intensive criteria (as well as five others) in a discussion that took less than one full page of the Pacific Reporter. That is all the more remarkable a feat since the Supreme Court of Oregon was investigating these criteria *in the first instance;* the trial court had not rested its decision on the basis of custom and the State did not argue that theory to the Supreme Court.[5]

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[4] From *Thornton* to *McDonald* to the decision below, the Supreme Court of Oregon's vacillations on the scope of the doctrine of custom make it difficult to say how much of the coast is covered. They also reinforce a sense that the court is creating the doctrine rather than describing it.

[5] In *Thornton,* the Supreme Court of Oregon appears to have misread Blackstone in applying the law of custom to the entire Oregon coast. "[C]ustoms . . . affect only the inhabitants of particular districts." 1 W. Black-

As I have described, petitioners' takings claim rests upon the assertion *both* that the new-found "doctrine of custom" is a fiction, *and* that if it exists the facts do not support its application to their property. The validity of both those assertions turns upon the facts regarding public entry—but that is no obstacle to our review. "In cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded." *Niemotko* v. *Maryland,* 340 U. S. 268, 271 (1951); see also *Broad River Power Co.* v. *South Carolina ex rel. Daniel,* 281 U. S. 537, 540 (1930); *Demorest* v. *City Bank Farmers Trust Co.,* 321 U. S. 36, 41–43 (1944). What *is* an obstacle to our review, however, is the fact that neither in the present case (because it was decided on motion to dismiss) nor even in *Thornton* itself (because the doctrine of custom was first injected into the case at the Supreme Court level) was any record concerning the facts compiled. It is beyond our power—unless we take the extraordinary step of appointing a master to conduct factual inquiries—to evaluate petitioners' takings claim.

Petitioners' due process claim, however, is another matter. Respondents' brief in opposition does not respond to that claim on its merits, but asserts that petitioners' claim has been "raise[d] for the first time in their petition for certiorari." Brief in Opposition 25. I think not. Petitioners argued before the Court of Appeals of Oregon that since they were not parties to *Thornton,* their rights to dry-sand beach could not have been determined by that decision because they "have not had their day in court." App. to Pet. for Cert. G–90 to G–92, and n. 3. In their brief to

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stone, Commentaries *74. *McDonald* seems to suggest that a custom may extend to all property "similarly situated" in terms of its physical characteristics, *i. e.,* all dry-sand beach abutting the ocean. 308 Ore., at 359, 780 P. 2d, at 724. That does not appear to comport with Blackstone's requirement that the custom affect "inhabitants of particular districts." See *Post* v. *Pearsall,* 22 Wend. 425, 440 (N. Y. Ct. Err. 1839); see also *Fitch* v. *Rawling,* 2 Bl. H. 394, 398–399, 126 Eng. Rep. 614, 616–617 (C. P. 1795) ("Customs must in their nature be confined to individuals of a particular description [and not to all inhabitants of England], and what is common to all mankind, can never be claimed as a custom"); *Sherborn* v. *Bostock,* Fitzg. 51, 94 Eng. Rep. 648, 649 (K. B. 1729) ("the custom . . . being general, and such a one as may extend to every subject, whether a citizen or a stranger, is void").

the Supreme Court of Oregon, they contended that application of *Thornton* to other property owners presented a "serious proble[m] of violation of the . . . due process clause of the Fifth Amendment." App. to Pet. for Cert. H–155. I believe that petitioners have sufficiently preserved their due process claim, and believe further that the claim is a serious one. Petitioners, who owned this property at the time *Thornton* was decided, were not parties to that litigation. Particularly in light of the utter absence of record support for the crucial factual determinations in that case, whether the Oregon Supreme Court chooses to treat it as having established a "custom" applicable to Cannon Beach alone, or one applicable to all "dry-sand" beach in the State, petitioners must be afforded an opportunity to make out their constitutional claim by demonstrating that the asserted custom is pretextual. If we were to find for petitioners on this point, we would not only set right a procedural injustice, but would hasten the clarification of Oregon substantive law that casts a shifting shadow upon federal constitutional rights the length of the State.

I would grant the petition for certiorari with regard to the due process claim.

No. 93–754. Chrissy F., by Her Next Friend and Guardian ad Litem, Medley *v.* Dale, Individually and as Chancellor for the Tenth Chancery Court District of Mississippi, et al. C. A. 5th Cir. Motions of Legal Services for Children and National Center for Protective Parents for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 995 F. 2d 595.

No. 93–1109. Alabama *v.* Yelder. Sup. Ct. Ala. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 630 So. 2d 107.

No. 93–1182. Cutright *v.* E. R. Carpenter Co., Inc. C. A. 4th Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 8 F. 3d 817.

No. 93–1213. Manufacturers Hanover Leasing Corp. *v.* Lowrey, Trustee of Robinson Brothers Drilling, Inc., et al. C. A. 10th Cir. Motions of Equipment Leasing Association of America, Inc., American Bankers Association, Commercial Finance Association, Inc., New York Clearing House Association, and American Council of Life Insurance for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 6 F. 3d 701.

No. 93–1238. NAGLE ET AL. *v.* ALSPACH, TRUSTEE IN BANKRUPTCY FOR RIMAR MANUFACTURING, INC., ET AL. C. A. 3d Cir. Motion of respondents for interest and damages denied. Certiorari denied. Reported below: 8 F. 3d 141.

No. 93–7488. PAWLAK *v.* PENNSYLVANIA BOARD OF LAW EXAMINERS. Sup. Ct. Pa. Motion of petitioner for leave to substitute questions presented denied. Certiorari denied.

No. 93–7002. CAMPBELL *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, ET AL. C. A. 9th Cir.;
No. 93–7152. SAN MIGUEL *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7235. ADANANDUS *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7379. NELSON *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7446. MEDINA *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir.;
No. 93–7447. NAPIER *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7476. RUIZ CAMACHO *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7568. ALDRIDGE *v.* TEXAS. Ct. Crim. App. Tex.;
No. 93–7627. HOWELL *v.* TENNESSEE. Sup. Ct. Tenn.; and
No. 93–7950. CALLINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: No. 93–7002, 997 F. 2d 512; No. 93–7152, 864 S. W. 2d 493; No. 93–7235, 866 S. W. 2d 210; No. 93–7379, 864 S. W. 2d 496; No. 93–7476, 864 S. W. 2d 524; No. 93–7627, 868 S. W. 2d 238.

JUSTICE BLACKMUN, dissenting.

Adhering to my view that the death penalty cannot be imposed fairly within the constraints of our Constitution, see my dissent in *Callins* v. *Collins*, *ante*, p. 1143, I would grant certiorari and vacate the death sentences in these cases.

Rehearing Denied

No. 92–780. NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL. *v.* SCHEIDLER ET AL., *ante*, p. 249;
No. 92–833. ALBRIGHT *v.* OLIVER ET AL., *ante*, p. 266;
No. 92–7549. SCHIRO *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON, ET AL., *ante*, p. 222;
No. 93–766. RYTMAN ET AL. *v.* KOFKOFF EGG FARM LIMITED PARTNERSHIP ET AL., *ante*, p. 1046;

No. 93–840. SCOTT *v.* AVON PRODUCTS, INC., ET AL., *ante,* p. 1073;

No. 93–877. GRACEY *v.* DAY, *ante,* p. 1093;

No. 93–6521. THOMAS *v.* DEPARTMENT OF STATE ET AL., *ante,* p. 1075;

No. 93–6653. ESPARZA *v.* MUNOZ, *ante,* p. 1054;

No. 93–6673. FITE *v.* CANTRELL ET AL., *ante,* p. 1055;

No. 93–6691. ALLEN *v.* GALLAGHER, *ante,* p. 1055;

No. 93–6761. GLADNEY *v.* GILLESS ET AL., *ante,* p. 1058;

No. 93–6803. HEIMERMANN *v.* WISCONSIN STATE PUBLIC DEFENDER, *ante,* p. 1060;

No. 93–6824. PARKER *v.* OREGON STATE BAR, *ante,* p. 1095;

No. 93–6842. CORETHERS *v.* LAKESIDE UNIVERSITY HOSPITAL ET AL., *ante,* p. 1077;

No. 93–6844. BRANCH *v.* HENNEPIN COUNTY SHERIFF'S DEPARTMENT ET AL., *ante,* p. 1061;

No. 93–6858. RUBIN *v.* GOMILLA ET AL., *ante,* p. 1096;

No. 93–6904. NORTON *v.* UNIVERSITY OF MICHIGAN ET AL., *ante,* p. 1077;

No. 93–6907. SMITH *v.* MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante,* p. 1077;

No. 93–6929. MOORE *v.* MISSISSIPPI, *ante,* p. 1063;

No. 93–6971. CARDINE *v.* MCANULTY ET AL., *ante,* p. 1097;

No. 93–7040. BUSCH *v.* JEFFES ET AL., *ante,* p. 1098; and

No. 93–7286. IN RE ZILS, *ante,* p. 1085. Petitions for rehearing denied.

No. 92–6609. BOYER *v.* DECLUE ET AL., 508 U. S. 974; and

No. 93–6748. SCAIFE *v.* HANNIGAN, WARDEN, ET AL., *ante,* p. 1057. Motions for leave to file petitions for rehearing denied.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1216 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINIONS OF INDIVIDUAL JUSTICES IN CHAMBERS

IMMIGRATION AND NATURALIZATION SERVICE ET AL. *v.* LEGALIZATION ASSISTANCE PROJECT OF THE LOS ANGELES COUNTY FEDERATION OF LABOR ET AL.

ON APPLICATION FOR STAY

No. A–426. Decided November 26, 1993

The application for a stay of a District Court order—which requires applicant Immigration and Naturalization Service (INS) to, among other things, identify and adjudicate legalization applications filed by certain categories of applicants, not arrest or deport certain immigrant classes, and temporarily grant certain immigrant classes stays of deportation and employment authorization—is granted. If presented with the question, this Court would grant certiorari and conclude that respondents, organizations providing legal help to immigrants, have no standing to seek the order granted by the District Court because they are outside the zone of interests that the Immigration Reform and Control Act of 1986 (IRCA) seeks to protect. See *Lujan* v. *National Wildlife Federation*, 497 U. S. 871, 883. IRCA was clearly meant to protect the interests of undocumented aliens, not organizations such as respondents. Although respondents were entities designated to assist legalization efforts during IRCA's amnesty period, the fact that an INS regulation may have affected the way they allocated their resources does not give them standing. The balance of equities also tips in the INS' favor. The order would impose a considerable administrative burden on the INS and would delay the deportation of at least those aliens who are deportable and who could not seek relief on their own behalf under *Reno* v. *Catholic Social Services*, 509 U. S. 43. If respondents lack standing, the order would also be an improper intrusion by a federal court into the workings of a coordinate branch of Government. On the other hand, those aliens whose deportation claims are ripe may still sue in their own right, as may organizations whose members' claims are ripe, assuming those organizations meet organizational standing criteria.

JUSTICE O'CONNOR, Circuit Justice.

The Solicitor General, on behalf of the Immigration and Naturalization Service (INS), requests that I stay an order of the District Court for the Western District of Washington pending appeal to the Court of Appeals for the Ninth Circuit. The Court of Appeals has rejected the INS' application for such a stay. Though "stay application[s] to a Circuit Justice on a matter before a court of appeals [are] rarely granted," *Heckler* v. *Lopez*, 463 U. S. 1328, 1330 (1983) (REHNQUIST, J., in chambers) (internal quotation marks omitted), I believe this is an exceptional case in which such a stay is proper.

I

In 1986, Congress enacted the Immigration Reform and Control Act of 1986 (IRCA), 100 Stat. 3359, which provided a limited amnesty for immigrants who had come to or stayed in the country illegally. See 8 U. S. C. § 1255a. Not all such immigrants were, however, eligible. Among other restrictions, the amnesty was available only to those who had "resided continuously in the United States in an unlawful status since [January 1, 1982]," § 1255a(a)(2)(A); also, those who came to the country legally but stayed illegally could only get amnesty if their "period of authorized stay . . . expired before [January 1, 1982,]" or their "unlawful status was known to the Government as of [January 1, 1982]," § 1255a(a)(2)(B). Respondents, organizations that provide legal help to immigrants, believe the INS interpreted these provisions too narrowly, in violation of the statute and the United States Constitution, and in 1988 brought their challenge to court.

In March 1989, the District Court ruled in respondents' favor, and in September 1992, the Ninth Circuit affirmed in part, reversed in part, and remanded to the District Court for further proceedings. On June 1, 1993, the District Court issued an order requiring the INS to, among other things, identify and adjudicate legalization applications filed by certain categories of applicants, not arrest or deport certain classes of immigrants, and temporarily grant certain classes of immigrants stays of deportation and employment authorizations.

On June 18, 1993, this Court decided *Reno* v. *Catholic Social Services, Inc.*, 509 U. S. 43 (1993) *(CSS)*, a case involving a very similar challenge to another portion of IRCA. In *CSS*, we held that the claims of most of the plaintiff aliens were barred by the ripeness doctrine. A federal court, we held, generally ought not entertain a request for an injunction or declaratory judgment regarding the validity of an administrative regulation unless it is brought by someone who has actually been concretely affected by the regulation. *Id.*, at 57–58. The mere existence of the regulation, we held, was not enough; rather, the regulation must actually have been applied to the plaintiff. *Ibid.* We concluded that the only people who could ask for injunctive or declaratory relief under IRCA were those who were told by the INS that they should not even bother to file their applications—a policy called "front-desking"—and perhaps also those who could show that the front-desking policy was a substantial cause of their failure to apply in the first place. *Id.*, at 61–67, and n. 28. Under the statute, aliens who did apply and whose applications were considered but rejected could only get judicial review of this rejection if the INS tried to deport them. 8 U. S. C. § 1255a(f)(1).

In light of our decision in *CSS*, the Government asked the District Court to vacate its order, on the theory that respondents' claims here, like the claims of the *CSS* plaintiffs, were not ripe. The District Court, however, disagreed. The *CSS* plaintiffs, the District Court pointed out, were individual aliens, whereas the plaintiffs in this case are organizations. The District Court concluded that the organizations had "suffered a concrete and demonstrable injury" because "the challenged regulations drained organizational resources and impaired their ability to assist and counsel nonimmigrants"; therefore, the court held, the organizations' claims were ripe. App. B to Application 6, citing *Legalization Assistance Project of Los Angeles County Federation of Labor* v. *INS*, 976 F. 2d 1198, 1204 (CA9 1992), cert. pending, No. 93–73. Therefore, "because this case has assumed the posture of a broad-based challenge to the regulations in question by organizations which the Ninth Circuit explicitly found have standing to bring these claims," App. B to Application 6, the court declined to vacate its June 1 order.

II

As a Circuit Justice dealing with an application like this, I must try to predict whether four Justices would vote to grant certiorari should the Court of Appeals affirm the District Court order without modification; try to predict whether the Court would then set the order aside; and balance the so-called "stay equities." *Heckler* v. *Lopez, supra*, at 1330–1331. This is always a difficult and speculative inquiry, but in this case it leads me to conclude that a stay is warranted.

Respondents assert that the INS is violating the law of the land, and they ask the federal courts to order the INS to stop this. But the broad power to "take Care that the Laws be faithfully executed" is conspicuously not granted to us by the Constitution. Rather, it is given to the President of the United States, see U. S. Const., Art. II, § 3, along with the power to supervise the conduct of the Executive Branch, Art. II, §§ 1, 2, which includes the INS. The federal courts are granted a different sort of power—the power to adjudge "Cases" or "Controversies," Art. III, § 2, cl. 1, within the jurisdiction defined by Congress, Art. III, § 2, cl. 2.

Congress has in fact considered the proper scope of federal court jurisdiction to review administrative agency actions. It has explicitly limited such review to claims brought by "person[s] suffering legal wrong[s] because of agency action" (not applicable to the respondent organizations involved here) or by persons "adversely affected or aggrieved by agency action *within the meaning of a relevant statute.*" 5 U. S. C. § 702 (emphasis added). We have consistently interpreted this latter clause to permit review only in cases brought by a person whose putative injuries are "within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Lujan* v. *National Wildlife Federation,* 497 U. S. 871, 883 (1990) *(NWF);* see also *Clarke* v. *Securities Industry Assn.,* 479 U. S. 388, 396–397 (1987).

I believe that, were it presented with this question, this Court would grant certiorari and conclude that the respondents are outside the zone of interests IRCA seeks to protect, and that therefore they had no standing to seek the order entered by the District Court. The District Court's decision and the Court of Appeals decision on which it relies, 976 F. 2d, at 1208, conflict with *Ayuda, Inc.* v. *Reno,* 7 F. 3d 246 (CADC 1993), and relate to an important question of federal law. See this Court's Rule 10. Moreover, on the merits, IRCA was clearly meant to protect the interests of undocumented aliens, not the interests of organizations such as respondents. Though such organizations did play a role in the IRCA scheme—during the amnesty period, they were so-called "qualified designated entities," which were to "assis[t] in the program of legalization provided under this section," § 1255a(c)(2)—there is no indication that IRCA was in any way addressed to their interests. The fact that the INS regulation may affect the way an organization allocates its resources—or, for that matter, the way an employer who currently employs illegal aliens or a landlord who currently rents to illegal aliens allocates its resources—does not give standing to an entity which is not within the zone of interests the statute meant to protect. *NWF, supra,* at 883.

The balance of equities also tips in the INS' favor. The order would impose a considerable administrative burden on the INS, and would delay the deportation of—and require the granting of interim work authorizations to—at least those aliens who are deportable and who could not seek relief on their own behalf under *CSS.* Moreover, if the above analysis is correct, the order is not merely an erroneous adjudication of a lawsuit between private litigants, but an improper intrusion by a federal court into the workings of a coordinate branch of the Government. See *Heckler* v. *Lopez,* 463 U. S., at 1336–1337; *FCC* v. *Pottsville Broadcasting Co.,* 309 U. S. 134, 141 (1940). On the other hand, neither *CSS* nor this stay prevents those aliens who were ordered deported or were front-desked, and are therefore possibly eligible for relief under *CSS,* from suing in their own right. Likewise, neither *CSS* nor this stay prevents any membership organizations which have members whose claims are ripe under *CSS* from suing on behalf of those members, assuming the organizations meet the criteria required for organizational standing.

I therefore grant the application to stay the District Court's order pending final disposition of the appeal by the Court of Appeals.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD ET AL. *v.* PINETTE ET AL.

ON APPLICATION FOR STAY OF INJUNCTION

No. A–517. Decided December 23, 1993

An application to stay an injunction requiring applicants to allow respondents to erect a large Latin cross in front of the Ohio Statehouse is denied. The privately owned cross is currently in place and scheduled to be removed tomorrow. Whatever harm may flow from allowing the cross to remain in place for one more day has probably already occurred; because the legal issues are presumably capable of repetition, the case is unlikely to become moot when the cross is removed. Applicants may be well advised to marshal their arguments in a certiorari petition that can be considered with appropriate deliberation.

JUSTICE STEVENS, Circuit Justice.

Today is Thursday, December 23, 1993. Yesterday evening applicants filed with me, in my capacity as Circuit Justice for the Sixth Circuit, an application for a stay of an injunction entered by the District Court and upheld by the Court of Appeals. The injunction required applicants to allow respondents, the Knights of the Ku Klux Klan and its leading officers, to erect a large Latin cross in front of the Ohio Statehouse in Columbus, Ohio. As I understand the situation, the cross is in place now and is scheduled to be removed tomorrow. If I were to grant the application forthwith, it would be removed today—unless, of course, respondents could persuade the full Court to reinstate the injunction.

The case is unique because the District Court found that the local government has effectively disassociated itself from the display:

> "Indeed, the 'reasonable' observer—being an individual who is knowledgeable about local events—might well know by virtue of all of the recent media coverage that the state of Ohio as represented by its leading elected

> officials opposes the display of the cross and any messages which might reasonably be associated with this display by the Klan. Moreover, the reasonable observer would likely know that a menorah was displayed during the celebration of Hanukkah, and a Christmas tree has been displayed throughout the month of December. From all of this, the reasonable observer should conclude that the government is expressing its toleration of religious and secular pluralism." No. C2–93–1162 (SD Ohio, Dec. 21, 1993), p. 13.

In their application, applicants do not dispute the accuracy of that finding.

Whether or not applicants' legal position is sound (and my opinion in *Allegheny County* v. *American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 U. S. 573, 646–655 (1989), explains why I am not unresponsive to their arguments), they must shoulder the burden of persuading me that irreparable harm will ensue if I do not grant their application. Frankly, it is my opinion that whatever harm may flow from allowing the privately owned cross to remain in place until tomorrow has probably already occurred. Moreover, because the legal issues are presumably capable of repetition, I do not believe the case will become moot when the cross is removed tomorrow. Rather than asking my colleagues to resolve those issues summarily, applicants may be well advised to marshal their arguments in a certiorari petition that can be considered with appropriate deliberation.

For these reasons, I shall defer to the judgment of the Court of Appeals and deny the application.

It is so ordered.

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA ET AL. *v.* CASEY ET AL.

ON APPLICATION FOR STAY OF MANDATE

No. A–655. Decided February 7, 1994

The application for a stay of the Court of Appeals's mandate allowing enforcement of Pennsylvania's Abortion Control Act, pending the filing of a petition for certiorari, is denied. The applicants are correct that, if it is proven that the Act would have the effect that applicants allege, enforcement of the Act's pertinent provisions may interpose a substantial obstacle to the exercise of the right to reproductive freedom guaranteed by the Due Process Clause and affirmed in *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833. However, there is no reasonable probability that this Court will grant review and no fair prospect that the applicants will ultimately prevail on the merits. The Court of Appeals's decision—that the District Court erred in reopening the record in the facial constitutional challenge to the Act and continuing its injunction against enforcement of various provisions—does not represent such an arguable departure from this Court's mandate in *Casey* as to warrant discretionary review or an award of the relief applicants seek. This Court did not remand *Casey* to the lower courts for application of the proper legal standard, but undertook to apply the standard to the statute, upholding the constitutionality of most of its provisions. None of *Casey*'s five opinions took the position that the District Court record was inadequate in a way that would counsel leaving those judgments to the District Court in the first instance. In addition, it was at least unusual for the District Court to enjoin enforcement of the statute on a showing of "plausible likelihood" of success.

JUSTICE SOUTER, Circuit Justice.

Addressing me in my capacity as Circuit Justice for the Third Circuit, the applicants seek a stay of the Court of Appeals's mandate in this case, pending their filing a petition for certiorari. See 28 U. S. C. § 2106. In the decision from which applicants intend to seek review, 14 F. 3d 848 (CA3 1994), the Court of Appeals held that the District Court's order allowing applicants to reopen the record in their facial constitutional challenge to Pennsylvania's Abortion Control

Act, 18 Pa. Cons. Stat. §§3203–3220 (1990 and Supp. 1993), and continuing its order enjoining the Commonwealth from enforcing various provisions of that statute, see 822 F. Supp. 227 (ED Pa. 1993), was inconsistent with both the mandate of this Court in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey,* 505 U. S. 833, and that of the Third Circuit on remand, see 978 F. 2d 74 (1992).[1] For the reasons set out below, I decline to stay the mandate of the Court of Appeals.

The conditions that must be shown to be satisfied before a Circuit Justice may grant such an application are familiar: a likelihood of irreparable injury that, assuming the correctness of the applicants' position, would result were a stay not issued; a reasonable probability that the Court will grant certiorari; and a fair prospect that the applicant will ultimately prevail on the merits, see generally *Rostker* v. *Goldberg,* 448 U. S. 1306, 1308 (1980) (Brennan, J., in chambers). The burden is on the applicant to "rebut the presumption that the decisions below—both on the merits and on the proper interim disposition of the case—are correct." *Ibid.*

With respect to the first consideration, the applicants assert that enforcement of the pertinent provisions of the Abortion Control Act will, for a "large fraction," *Casey,* 505 U. S., at 895, of the affected population, interpose a "substantial obstacle," *id.,* at 877, to the exercise of the right to reproductive freedom guaranteed by the Due Process Clause and affirmed in this Court's *Casey* opinion.[2] I have no difficulty concluding that such an imposition, if proven, would qualify as "irreparable injury," and support the issuance of a stay if the other factors favored the applicants' position. Those other factors, however, point the other way.[3]

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[1] The Third Circuit panel also denied a motion, substantially identical to the one presented here, to stay its mandate.

[2] For the purposes of this opinion, I join the applicants and the courts below in treating the joint opinion in *Planned Parenthood of Southeastern Pa.* v. *Casey,* see 505 U. S., at 843 (opinion of O'CONNOR, KENNEDY, and SOUTER, JJ.) as controlling, as the statement of the Members of the Court who concurred in the judgment on the narrowest grounds. See *Marks* v. *United States,* 430 U. S. 188 (1977).

The core of the applicants' submission is that the Court of Appeals fundamentally misread our opinion and mandate in *Casey* in determining that the District Court erred in reopening the record and continuing its injunction against enforcement of the Pennsylvania statute.[4] Although applicants are right as a general matter in arguing that this Court has a special interest in ensuring that courts on remand follow the letter and spirit of our mandates, see, *e. g., In re Sanford Fork & Tool Co.*, 160 U. S. 247, 255–256 (1895), I am not convinced (nor, I believe, would my colleagues be) that the Court of Appeals's opinion represents such an arguable departure from our mandate as to warrant discretionary review or, in the end, an award of the relief the applicants seek.

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[3] I note in this regard that the availability of further opportunities to test the constitutionality of the statute mitigates somewhat the quantum of harm that might ensue. The Court of Appeals acknowledged, correctly, that the applicants or other potential litigants remain free to test the constitutionality of the Act "as applied." See 14 F. 3d 848, 862, nn. 18, 21 (CA3 1994). Since I am convinced that a majority of this Court would likely hold a further facial challenge by the parties in this case to be precluded by the opinion and mandate in *Casey*, there is no occasion to consider here the Court of Appeals's broader assertion that, even in cases where a statute's facial validity depends on an empirical record, see *Fargo Women's Health Organization* v. *Schafer*, 507 U. S. 1013 (1993) (O'CONNOR, J., concurring in denial of stay), a decision rejecting one such challenge must be dispositive as against all other possible litigants. Also potentially relevant to the irreparable injury calculus is the District Court's "considerable doubt" whether the Commonwealth is, in fact, prepared to begin immediate enforcement of several of the disputed provisions. See 822 F. Supp. 227, 237 (ED Pa. 1993).

[4] The applicants' contention that the Court of Appeals's ruling "conflicts" with decisions recognizing district court discretion to decide matters left open by a mandate, see, *e. g., Quern* v. *Jordan*, 440 U. S. 332, 347, n. 18 (1979), cf. this Court's Rule 10.1(c), amounts to no more than a restatement of their basic claim, *i. e.*, that the District Court's reading of *Casey*, and not the Third Circuit's, was the correct one.

I note that I am not as certain as the Court of Appeals was that the District Court here has defied the terms of our remand in a manner that justifies comparison to *Aaron* v. *Cooper,* 163 F. Supp. 13 (ED Ark.), rev'd, 257 F. 2d 33 (CA8), aff'd, *Cooper* v. *Aaron,* 358 U. S. 1 (1958). The letter of our *Casey* opinion is not entirely hard edged. We remanded for "proceedings consistent with this opinion, including consideration of the question of severability," 505 U. S., at 901, thereby allowing for the possibility (as applicants strenuously argue) that there might be something for the courts below to determine beyond the severability from the body of the statute of the provisions held constitutionally invalid.[5] More than once, we phrased our conclusion that particular provisions withstood facial challenge under the Due Process Clause in terms of "the record" before us in the case, see *id.,* at 884, 887, 901; see also *id.,* at 926 (BLACKMUN, J., concurring in part, concurring in judgment in part, and dissenting in part) (suggesting that evidence could be adduced "in the future" that would establish the invalidity of the provisions and arguing that the joint opinion did not "rul[e] out [that] possibility").

The Court of Appeals's construction of the opinion and mandate, however, is the correct one. Although we acknowledged in *Casey* that the precise formulation of the standard for assessing constitutionality of abortion regulation was, in some respects, novel, see 505 U. S., at 876–877; see also 14 F. 3d, at 853–854 (acknowledging that Court had modified the Third Circuit's "undue burden" test), we did not remand the case to the lower courts for application of the proper standard, as is sometimes appropriate when a new legal standard is announced, see, *e. g., Lucas* v. *South Carolina Coastal Council,* 505 U. S. 1003 (1992). Instead, we undertook to apply the standard to the Pennsylvania statute, upholding the constitutionality of its core provisions governing informed consent, recordkeeping, and parental consent, while ruling that the husband-notification requirement, on its face, imposed a constitutionally intolerable burden on the freedom of women to choose abortion. 505 U. S., at 887–898. Significantly, none of the five opinions took the position that the record was inadequate in a way that would counsel leaving those judgments to the District Court in the first instance. Cf., *e. g., McCleskey* v. *Zant,* 499 U. S. 467, 506, 523–528 (1991) (Marshall, J., dissenting). Thus, the references to "this record," combined with our readiness to decide the validity of the challenged provisions under the "undue burden" standard, are plausibly understood as reflecting two conclusions: (1) that litigants are free to challenge similar restrictions in other jurisdictions, as well as these very provisions as applied, see *Fargo Women's Health Organization* v. *Schafer,* 507 U. S. 1013 (1993) (O'Connor, J., concurring in denial of stay); and (2) that applicants had been given a fair opportunity to develop the record in the District Court.

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[5] After the Court of Appeals had held that the invalid provisions could be severed from the rest of the statute, see 978 F. 2d 74 (CA3 1992), that court itself remanded to the District Court for "such further proceedings as may be appropriate," *id.,* at 78.

Indeed, the District Court's error in rejecting the latter conclusion deserves a word of comment. The District Court reasoned that because our opinion in *Casey* altered the "rules of the game," it would be unjust to dispose of an "undue burden" challenge on the basis of a record developed for purposes of a challenge based on "strict scrutiny." See 822 F. Supp., at 235–236. But even if this reasoning were not in tension with the approach ultimately taken in the *Casey* opinion, the applicants do not seriously suggest that the vitality of the "strict scrutiny" test was free from uncertainty at the time this case was brought in the District Court or that they lacked incentive to compile a record to support the invalidation of the challenged provisions under a less strict standard of review. The original District Court opinion, 686 F. Supp. 1089 (ED Pa. 1988), contains 287 detailed findings of fact and carries every indication that the applicants were given broad latitude to introduce evidence, call witnesses, and elicit testimony about the potential effects of the challenged provisions on the reproductive freedom of women.

In addition to these reasons for thinking there is no reasonable probability of review and no fair prospect of reversing the Court of Appeals, one other point bears mention. In continuing its order enjoining enforcement of various statutory provisions, the District Court concluded that the evidence applicants were seeking to introduce raised only a "plausible likelihood" of prevailing in their renewed facial challenge to the statute. 822 F. Supp., at 238. It was at least unusual for a District Court to enjoin enforcement of a statute, the last word on which was the recent judgment of this Court upholding its constitutionality, on a showing of "plausible likelihood" of success. This element of the case would certainly, and properly, influence my colleagues' decision whether to review the judgment of the Court of Appeals, as well as their view of its merits if review were granted.

The application for stay of mandate is denied.

CBS INC. ET AL. *v.* DAVIS, CIRCUIT JUDGE, SEVENTH JUDICIAL CIRCUIT, PENNINGTON COUNTY, SOUTH DAKOTA, ET AL.

ON APPLICATION FOR STAY

No. A–669. Decided February 9, 1994

A South Dakota Circuit Court injunction prohibiting CBS from airing videotape footage taken at a South Dakota meat-packing company is stayed. The decision below conflicts with this Court's decisions on prior restraint in the First Amendment context. See, *e. g., Organization for Better Austin* v. *Keefe,* 402 U. S. 415, 419; *Nebraska Press Assn.* v. *Stuart,* 427 U. S. 539, 562. There is a reasonable probability that the case would warrant certiorari, and the broadcast's indefinite delay will cause irreparable harm to the news media that is intolerable under the First Amendment. The Amendment requires that the company remedy any harms it might suffer as a result of the broadcast through a damages proceeding rather than through suppression of protected speech.

JUSTICE BLACKMUN, Circuit Justice.

CBS Inc., CBS News Division, a division of CBS Inc., and the television show 48 Hours (collectively CBS) apply for an emergency stay of a preliminary injunction entered by the Circuit Court for the Seventh Judicial District of South Dakota prohibiting CBS from airing videotape footage taken at the factory of Federal Beef Processors, Inc. (Federal), a South Dakota meat-packing company. CBS seeks to televise the videotape this evening on a 48 Hours investigative news program and contends that the injunction constitutes an intolerable prior restraint on the media. Due to the time pressure involved in resolving this emergency application, my discussion is necessarily brief.

As part of an ongoing investigation into unsanitary practices in the meat industry, CBS obtained footage of Federal's meat-packing operations through the cooperation of a Federal employee, who voluntarily agreed to wear undercover camera equipment during his shift one day in Federal's plant. The employee received no compensation for his cooperation. CBS represents that the investigation was not targeted at Federal but at the meat-processing industry generally and that CBS did not intend to reveal the company that was the source of the material.

Federal sued to prevent the telecast of the videotape, alleging, *inter alia,* claims of trespass, breach of the duty of loyalty and its aiding and abetting, and violation of the Uniform Trade Secrets Act, S. D. Comp. Laws Ann. § 37–29–1 *et seq.* (Supp. 1993). On January 25, 1994, the South Dakota Circuit Court entered a temporary restraining order, and on February 7 the court preliminarily enjoined CBS from "disseminating, disclosing, broadcasting, or otherwise revealing" any footage of the Federal plant interior. Findings of Fact, Conclusions of Law, and Order for Preliminary Injunction, Civ. No. 94–590, p. 8. The court found that disclosure of the videotape "could result in a significant portion of the national chains refusing to purchase beef processed at Federal and thereafter in the Federal plant's closure," and that "[p]ublic dissemination of Federal's confidential and proprietary practices and processes would likely cause irreparable injury to Federal." *Id.,* at 3. The court concluded that because the videotape "was obtained by CBS, at the very least, through calculated misdeeds," *id.,* at 4, conventional First Amendment prior restraint doctrine was inapplicable, and that any injury to CBS resulting from delay was outweighed by the potential economic harm to Federal.

On February 8, 1994, the South Dakota Supreme Court denied CBS' application for a stay of the injunction and scheduled oral argument on CBS' original petition for a writ of mandamus for March 21, 1994. The State Supreme Court later amended its order to require that the Circuit Judge rescind the injunction or show cause on March 21 why a peremptory writ of mandamus should not be issued.

Although a single Justice may stay a lower court order only under extraordinary circumstances, such circumstances are presented here. For many years it has been clearly established that a "prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." *Organization for a Better Austin* v. *Keefe,* 402 U. S. 415, 419 (1971), quoting *Carroll* v. *President and Comm'rs of Princess Anne,* 393 U. S. 175, 181 (1968). "Where . . . a direct prior restraint is imposed upon the reporting of news by the media, each passing day may constitute a separate and cognizable infringement of the First Amendment." *Nebraska Press Assn.* v. *Stuart,* 423 U. S. 1319, 1329 (1975) (BLACKMUN, J., in chambers). As the Court recognized in *Nebraska Press Assn.* v. *Stuart,* 427 U. S. 539, 559 (1976) (footnote omitted), prior restraints are particularly disfavored:

> "A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted . . . .
>
> "A prior restraint, by contrast . . . , has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time."

Although the prohibition against prior restraints is by no means absolute, the gagging of publication has been considered acceptable only in "exceptional cases." *Near* v. *Minnesota ex rel. Olson,* 283 U. S. 697, 716 (1931). Even where questions of allegedly urgent national security, see *New York Times Co.* v. *United States,* 403 U. S. 713 (1971), or competing constitutional interests, *Nebraska Press Assn.,* 427 U. S., at 559, are concerned, we have imposed this "most extraordinary remed[y]" only where the evil that would result from the reportage is both great and certain and cannot be mitigated by less intrusive measures. *Id.,* at 562.

Federal has not met this burden here. The Circuit Court no doubt is correct that broadcast of the videotape "could" result in significant economic harm to Federal. Even if economic harm were sufficient in itself to justify a prior restraint, however, we previously have refused to rely on such speculative predictions as based on "factors unknown and unknowable." *Id.*, at 563; see also *New York Times Co.* v. *United States, supra.*

Nor is the prior restraint doctrine inapplicable because the videotape was obtained through the "calculated misdeeds" of CBS. In *New York Times Co.*, the Court refused to suppress publication of papers stolen from the Pentagon by a third party. Subsequent civil or criminal proceedings, rather than prior restraints, ordinarily are the appropriate sanction for calculated defamation or other misdeeds in the First Amendment context. Even if criminal activity by the broadcaster could justify an exception to the prior restraint doctrine under some circumstances, the record as developed thus far contains no clear evidence of criminal activity on the part of CBS, and the court below found none.

I conclude that the decision below conflicts with the prior decisions of this Court, that there is a reasonable probability that the case would warrant certiorari, and that indefinite delay of the broadcast will cause irreparable harm to the news media that is intolerable under the First Amendment. Entry of a stay therefore is appropriate under the All Writs Act, 28 U. S. C. § 1651. See *INS* v. *Legalization Assistance Project of Los Angeles County Federation of Labor, ante,* at 1301 (O'CONNOR, J., in chambers). If CBS has breached its state-law obligations, the First Amendment requires that Federal remedy its harms through a damages proceeding rather than through suppression of protected speech.

The Circuit Court's injunction is therefore stayed.

PACKWOOD *v.* SENATE SELECT COMMITTEE ON ETHICS

ON APPLICATION FOR STAY

No. A–704. Decided March 2, 1994

Senator Bob Packwood's application for a stay pending appeal to the Court of Appeals of a District Court decision enforcing a subpoena *duces tecum* issued by respondent Senate Select Committee on Ethics is denied. Because this matter is pending before the Court of Appeals and because that court denied applicant's motion for a stay, he has an especially heavy burden. *Fargo Women's Health Organization* v. *Schafer*, 507 U. S. 1013, 1014. Resolution of two of his claims—that the subpoena is overly broad and that it violates his Fourth Amendment right to privacy—would entail factbound determinations, and thus it is unlikely that those claims raise issues on which four Members of this Court would grant certiorari. Moreover, the Court's recent denial of a petition for certiorari raising the precise issue made in applicant's third claim—that the subpoena violates his Fifth Amendment protection against self-incrimination under *Boyd* v. *United States*, 116 U. S. 616—demonstrates quite clearly the unlikelihood that four Justices would vote to grant review on this issue.

CHIEF JUSTICE REHNQUIST, Circuit Justice.

Applicant Senator Bob Packwood requests that I grant a stay pending appeal to the Court of Appeals for the District of Columbia Circuit of a decision by the District Court enforcing the subpoena *duces tecum* issued by respondent Senate Select Committee on Ethics. The Court of Appeals recently, and unanimously, denied his emergency motion for a stay pending appeal.

The criteria for deciding whether to grant a stay are well established. An applicant must demonstrate: (1) a reasonable probability that four Justices would vote to grant certiorari; (2) a significant possibility that the Court would reverse the judgment below; and (3) a likelihood of irreparable harm, assuming the correctness of the applicant's position, if the judgment is not stayed. *Barnes* v. *E-Systems, Inc. Group*

Hospital Medical & Surgical Ins. Plan, 501 U. S. 1301, 1302 (1991) (SCALIA, J., in chambers). Because this matter is pending before the Court of Appeals, and because the Court of Appeals denied his motion for a stay, applicant has an especially heavy burden. "When a matter is pending before a court of appeals, it long has been the practice of Members of this Court to grant stay applications only 'upon the weightiest considerations.'" *Fargo Women's Health Organization* v. *Schafer,* 507 U. S. 1013, 1014 (1993) (O'CONNOR, J., concurring in denial of stay application) (quoting *O'Rourke* v. *Levine,* 80 S. Ct. 623, 624, 4 L. Ed. 2d, 615, 616 (1960) (Harlan, J., in chambers); see also *Beame* v. *Friends of the Earth,* 434 U. S. 1310, 1312 (1977) (Marshall, J., in chambers) (a stay applicant's "burden is particularly heavy when . . . a stay has been denied by the District Court and by a unanimous panel of the Court of Appeals").

Applicant raises three challenges to the enforcement of the subpoena. First, he contends that the subpoena is impermissibly broad and seeks information beyond the defined subject matter of the pending Committee investigation. In applicant's view, the subpoena should have been limited to those documents pertaining to the Committee's initial inquiry into allegations regarding sexual misconduct; as it stands now, the subpoena, according to applicant, is tantamount to a general warrant. See *Stanford* v. *Texas,* 379 U. S. 476, 480 (1965) (holding that general warrants are clearly forbidden by the Fourth Amendment).

As we stated in *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186, 209 (1946), determining whether a subpoena is overly broad "cannot be reduced to formula; for relevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry." Because resolution of applicant's claim would entail a factbound determination of the nature and scope of respondent's investigation, I do not think his claim raises an issue on which four Members of the Court would grant certiorari. Cf. *United States* v. *Nixon,* 418 U. S. 683, 702 (1974) ("Enforcement of a pretrial subpoena *duces tecum* must necessarily be committed to the sound discretion of the trial court since the necessity for the subpoena most often turns upon a determination of factual issues"). Moreover, whatever merit applicant's argument may have had initially, it has been seriously undermined by the evidence, presented to the District Court, that his diary transcripts and tapes have been altered. Regardless of the scope of respondent's initial inquiry, surely respondent has the authority to investigate attempts to obstruct that inquiry, and the evidence of tampering very likely renders all of the requested diary entries relevant to that investigation.

Applicant next asserts that the subpoena violates his Fourth Amendment right to privacy. The District Court, relying on our decisions in *O'Connor* v. *Ortega,* 480 U. S. 709 (1987), and *Nixon* v. *Administrator of General Services,* 433 U. S. 425 (1977), balanced applicant's privacy interests against the importance of the governmental interests. The court concluded that the latter outweighed the former. Applicant does not quarrel with the legal standard applied by the District Court, only with its conclusion. Because this claim thus also involves only a factbound determination, I do not think certiorari would be granted to review it.

Finally, applicant argues that the subpoena violates his Fifth Amendment protection against self-incrimination. He relies primarily on *Boyd* v. *United States,* 116 U. S. 616 (1886), and argues that the Courts of Appeals are in conflict as to whether *Boyd* remains controlling with regard to the production of private papers. We recently denied a petition for certiorari raising this precise issue. See *Doe* v. *United States, ante,* p. 1091. Our recent denial demonstrates quite clearly the unlikelihood that four Justices would vote to grant review on this issue. See *South Park Independent School Dist.* v. *United States,* 453 U. S. 1301, 1304 (1981) (Powell, J., in chambers) (denying stay application because it raised issues "almost identical to those presented three years ago, when the Court voted to deny certiorari").

Accordingly, the request for a stay is denied.

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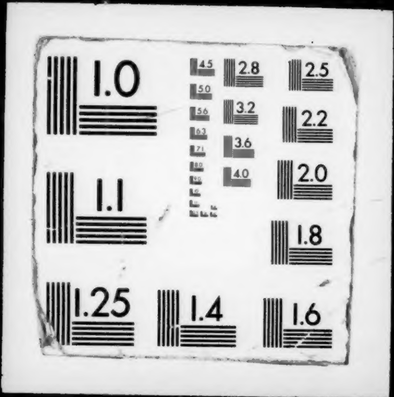
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